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Federal Register

Friday
February 14, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

Continental Shelf
Coast Guard

Housing
Housing and Urban Development Department

Loan Programs—Business
Economic Development Administration

Radio Broadcasting
Federal Communications Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 306

[Docket No. 60101-6001]

Business Development Program; Financial Assistance for Industrial and Commercial Purposes

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (EDA) is hereby providing notice that the interim final rule published May 20, 1985 (50 FR 20746) is now a final rule without change. This rule increases EDA's ordinary maximum participation for business loan projects from $10,000 and $20,000 per job created or saved. Findings from EDA and GAO studies indicate that the current average government cost per job saved or created far exceeds the $10,000 limit. An increased limit of $20,000 per job created or saved is consistent with these findings.

DATE: The interim final regulation was effective May 20, 1985 and remains in effect without change.

FOR FURTHER INFORMATION CONTACT: Travis P. Dungan, Deputy Assistant Secretary for Finance, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7844, Washington, D.C. 20230, (202) 377-5067.

SUPPLEMENTARY INFORMATION: EDA published this interim rule regarding its business development program regulation on May 20, 1985 (50 FR 20746) and allowed interested persons 60 days to comment. No comments were received.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act and all other relevant laws.

Since notice and opportunity for comment are not required to be given for this rule under Section 553 of the APA (5 U.S.C. 553) or any other law, under Sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. § 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of subjects in 13 CFR Part 306

Business and industry; Community development, Indians, Loan programs—business, Loan programs—community development, Rent subsidies.

Accordingly, for the reasons set forth above, the interim rule published at 50 FR 20746, May 20, 1985, is adopted as final with the following change:

PART 306—BUSINESS DEVELOPMENT PROGRAM [AMENDED]

1. The authority citation for Part 306 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211) Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

Dated: December 17, 1985.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 86-3264 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-01-AD; Amdt. 39-5237]

Airworthiness Directives: Cessna Model S550 Airplanes, Serial Numbers S550-0001 Through S550-0079

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons a new airworthiness directive (AD), which was previously made effective as to all known U.S. owners and operators of certain Cessna Model S550 airplanes by individual priority letters. This AD is necessary because the manufacturer has reported that the cotter pins securing the left and right main landing gear torque link connections may be broken. Broken cotter pins could result in the loss of the nuts and bolts, which could lead to a landing accident and result in the loss of an airplane. This AD requires inspection to ensure that these cotter pins are in place, and repair, if necessary.

DATES: Effective March 7, 1986.

This AD was effective earlier to all recipients of Priority Letter AD 86-01-02, dated January 6, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Citation Marketing Division, Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: Cessna, the manufacturer of the Model S550 airplane, reported finding broken cotter pins, which secure the nuts to bolts in the left and right main landing gear torque link connections, on undelivered and in-service airplanes. Four broken pins were found on in-service planes; three were found on undelivered planes. Cessna issued Alert Service Letter (SLA) S550–32–03, dated December 20, 1985, which recommends certain inspections prior to each flight to ensure that the cotter pins securing the left and right main landing gear torque link connections are in place, and describes additional inspections and repair procedures to establish that the total installation is correct.

Since this situation is likely to exist or develop on other airplanes of the same type design, Priority Letter AD 86–01–02 was issued on January 6, 1986, and made effective immediately to all known U.S. owners and operators of certain Cessna Model S550 airplanes. This AD requires inspection and repair, if necessary, of the main landing gear torque link connections in accordance with the Cessna alert service letter previously mentioned.

Since a situation existed and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CESSNA: Applicable to Model S550 airplanes, Serial Numbers S550–0001 through S550–0079, certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent failure of the cotter pins securing the left and right main landing gear torque link connections, accomplish the following:

A. Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Prior to each flight, verify that the cotter pins securing the left and right main landing gear torque link connections are installed. If either cotter pin is broken or missing, prior to further flight, accomplish the repair procedure referenced in Cessna Alert Service Letter S550–32–03, dated December 20, 1985."

B. Within the next 30 days or 20 hours time-in-service after the effective date of this AD, whichever occurs first, inspect and repair, if necessary, the left and right main landing gear torque link connections, in accordance with Cessna Alert Service Letter S550–32–03, dated December 20, 1985. Compliance with the requirements of this paragraph constitutes terminating action for the requirements of paragraph A., above.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

All persons affected by this directive may obtain copies of Cessna Alert Service Letter S550–32–03 upon request to the Citation Marketing Division, Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This material may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas.

This Amendment becomes effective March 7, 1986, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 86–01–02, dated January 6, 1986.

Issued in Seattle, Washington, on February 6, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–3242 Filed 2–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–3]

Alteration of Control Zone, Troutdale, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the present description of the Troutdale, Oregon (Portland-Troutdale Airport), control zone by deleting reference to the 154 degree radial of the Portland VORTAC. Due to a change to the Portland, Oregon, control zone description (84–ANM–16), action is necessary to redescribe that portion of the Troutdale control zone which abuts the Portland control zone.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM–534, Federal Aviation Administration, Docket No. 85–ANM–3, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2534.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1985, the FAA proposed to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by redefining the current boundaries of the Troutdale, Oregon, Control Zone (50 FR 28591). This action deletes reference to the 154 degree radial of the Portland VORTAC in the present description and redescribes that portion of the Troutdale Control Zone which abuts the Portland Control Zone.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal

were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the description of the Troutdale, Oregon (Portland-Troutdale Airport), control zone by deleting reference to the 154 degree radial of the Portland VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.171 as follows:

Troutdale, Oregon, Control Zone (Revised)

That airspace bounded on the north and west by a 5-mile radius area centered on the Portland-Troutdale Airport (lat. 45°33'30"N/ long. 122°23'49"W), on the south and east by a line 2 miles north and parallel to the Laker LOM (lat. 45°32'38"N/long. 122°27'49"W) 119° and 299° bearing extending from the LOM to 8 miles southeast, excluding the airspace within the Portland, Oregon, control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/ Facility Directory.

Issued in Seattle, Washington, on February 6, 1986.

David E. Jones,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 86-3241 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 275

Tender Offers by Issuers and Uniform Investment Adviser Registration Application Form; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules; corrections.

SUMMARY: This document corrects final rules which appeared at 51 FR 3031 (January 23, 1986) and 50 FR 42903 (October 23, 1985). This action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Deren Manasevit (202) 272-7494—Rule 13e-4; Jay Gould (202) 272-2810—Rule 204-1.

Accordingly, the Securities and Exchange Commission is correcting 17 CFR 240.13e-4 and 275.204-1 as follows:

§ 240.13e-4 [Corrected]

1. In Section 240.13e-4(f)(2)(i) remove the word "and" at the end of the paragraph and insert the word "and" at the end of paragraph (f)(2)(ii).

§ 275.204-1 [Corrected]

2. In Section 275.204-1(b)(1) after the first sentence, insert "(b)(2)" designating the rest of the text as paragraph (b)(2).

February 11, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3331 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8070]

Income Tax; Coordination of Loss Deferral and Wash Sale Rules and Treatment of Holding Periods and Losses Under Section 1092; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to Treasury Decision 8070, which was published in the **Federal Register** on January 15, 1986 (51 FR 1785). T.D. 8070 amended temporary regulations that had been published in the **Federal Register** on January 24, 1985 (50 FR 3317). The regulations that are subject of this correction relate to loss deferral, wash sale, and holding period rules for straddles.

EFFECTIVE DATE: These corrections are effective January 15, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy J. McKenna of the Legislative and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC (Attention: CC:LR:T). Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1985, the **Federal Register** published Treasury Decision 8007 (50 FR 3317) which adopted temporary regulations relating to coordination of loss deferral and wash sale rules. In part, T.D. 8007 added § 1.1092(b)-1T to the regulations. Paragraph (f) of § 1.1092(b)-1T consisted of examples numbered *(1)* through *(17)*.

On January 15, 1986, the **Federal Register** published Treasury Decision 8070 which amended the regulations set forth in T.D. 8007. Part of those amendments removed *Examples (13), (14)* and *(15)*; and redesignated *Examples (9), (10), (11)* and *(12)* as *(Examples (10), (11), (12)* and *(13)*, respectively.

Need for Correction

In § 1.1092(b)-1T (f), the first sentence in *Examples (10), (11)*, and *(12)*, as numbered prior to their redesignation in T.D. 8070, contains a reference to "example (9)". This example (9) is the same *Example (9)* that was redesignated *Example (10)* in T.D. 8070. Inadvertently, the internal references were not revised to reflect that redesignation.

Correction of Publication

Accordingly, the publication of Treasury Decision 8070, which was the subject of FR Doc. 86-726 (51 FR 1785), is corrected as follows:

§ 1.1092(b)-1T [Corrected]

Paragraph 1. On page 1786, beginning in the first column and continuing into the second column, in the instructional paragraph that is numbered Par. 2, a new subparagraph (9) is added

immediately following subparagraph (8), to read as follows:

(9) In the first sentence in redesignated *Examples (11), (12)* and *(13)*, the language "example (9)" is removed and the language "*example (10)*" is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-3353 Filed 2-13-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed program amendment submitted by the State of Montana as a modification to its permanent regulatory program, hereinafter referred to as the Montana program, which the Secretary of the Interior approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Montana Strip and Underground Reclamation Act which address: (1) Permit review procedures; (2) bond release procedures; and (3) a cap on the $750 per-day civil penalty provisions. After considering all comments received and conducting a thorough review of the proposed amendments, the Director has determined that the proposed modifications meet the requirements of SMCRA and the Federal regulations, and is approving the proposed amendment as submitted by Montana on July 3, 1985. The Federal regulations at 30 CFR Part 926 codifying decisions concerning the Montana program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION:

I. Background

Information concerning the general background on the Montana program submission and the approval process, the Secretary's findings, the disposition of comments, an explanation of the initial conditions of approval and program amendments can be found in the April 1, 1980 **Federal Register** (45 FR 21560), February 11, 1982 **Federal Register** (47 FR 6266), January 3, 1984 **Federal Register** (49 FR 66), January 3, 1985 **Federal Register** (50 FR 260) and November 18, 1985 **Federal Register** (50 FR 47386).

II. Submission of Amendment

On July 3, 1985, the State of Montana submitted to OSMRE an amendment to its permanent regulatory program. The amendment consists of three bills passed by the Montana Legislature which amend the Montana Strip and Underground Mine Reclamation Act.

The July 6, 1985 **Federal Register** announced receipt of the proposed revisions and requested public comments on their adequacy. In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held. The public comment period closed on September 6, 1985.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that the proposed amendments as submitted by Montana on July 3, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII. All of the amended provisions are cited at the end of this notice in the amendatory language for Section 926.15.

The first bill, House Bill 784, revises the Department of State Land (DSL) strip mine permit review procedure. In light of OSMRE oversight findings and subsequent recommendations to Montana, the State submitted to OSMRE this bill which amends Montana's law at section 82-4-231 concerning the administrative completeness review for permit applications and associated public comment period. As a result of the amended language, Montana will coordinate its permit review process and environmental impact statement preparation process with those of OSMRE for proposed operations involving Federal lands. The Director finds the amendment submitted by Montana concerning procedures for processing permit applications and areas of responsibility for both applicants and the DSL are no less effective than the Federal permitting provisions at 30 CFR Part 773.

The second bill, House Bill 769, repeals most of the statutory provisions of section 82-4-232 concerning bond release procedures and replaces it with language intended to be no less effective than the revised Federal provisions at 30 CFR 800.40 concerning bond release procedures.

Specifically House Bill 769 requires the applicant, within 30 days after filing an application for bond release, to publish notification of his request for bond release, including specific detail as to the location of land affected, permit number, acres affected and other pertinent information once a week for four consecutive weeks in a newspaper of general circulation in the locality of the operation. In turn, the Department of State Lands, within 30 days of receipt of the application, is required to notify certain entities of the operator's request for bond release and to inspect the site for adequate reclamation.

House Bill 769 also sets forth specific procedures to be followed by the Montana DSL when processing operators' requests for bond release. The amendment specifies the public notification requirements to be followed, procedures for both approval and disapproval of requests, operators' rights to appeal DSL decisions and procedures to be followed by the operator when requesting a hearing on the State's decision. The Director finds the amendment submitted by Montana concerning procedures for processing an operator's request for bond release to be no less effective than the Federal provisions at 30 CFR 800.40.

The third bill, Senate Bill 359, amends the State law at Section 82-4-254 concerning penalties for violations by adding provisions which place a cap on the $750 per-day civil penalty for failure to comply with an abatement order. The Director finds the amendment submitted by Montana placing a cap on civil penalties for unabated violations to be no less effective than the comparable Federal provision at 30 CFR 845.15.

Montana has also added language in Senate Bill 359 that requires the DSL to institute appropriate alternative enforcement action against an operator who fails to abate a violation within the prescribed 30-day abatement period. The Director finds the alternative enforcement actions identified at Sections 82-4-251(3) and 82-4-254 (4) and (6) of the Montana Strip and Underground Mine Reclamation Act to

be as stringent as the Federal alternative enforcement provisions identified at sections 518 (e) and (f) and 521 (a)(4) and (c) of SMCRA.

IV. Public Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies. Of those agencies invited to comment, the Army Corps of Engineers, the Department of the Interior's Bureau of Indian Affairs, Bureau of Land Management and Bureau of Reclamation, responded, all with non-substantive comments.

V. Director's Decisions

The Director, based on the above findings is approving the proposed amendment to the Montana program, as submitted to OSMRE on July 3, 1985. The Federal rules at 30 CFR Part 926 are being amended to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1986.

Brent Wahlguist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

30 CFR Part 926 is amended as follows:

PART 926—MONTANA

1. The authority citation for Part 926 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 926.15 is amended by adding a new paragraph (f) to read as follows:

§ 926.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendment, as submitted to OSMRE on July 3, 1985, is approved effective February 14, 1986: Modification to the Montana Strip and Underground Mine Reclamation Act at the following sections: 82–4–231 concerning submission of and action on reclamation plans; 82–4–232 concerning bond release procedures and 82–4–254 concerning penalties for violations of the Montana program.

[FR Doc. 86–3311 Filed 2–13–86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS KEY WEST (SSN 722) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS KEY WEST (SSN 722) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS KEY WEST (SSN 722) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS KEY WEST (SSN 722).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is

impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, § 2(a)(i), Annex I
USS Key West	SSN 722	3.5

2. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters; § 2(k), Annex I
USS Key West	SSN 722			209°	4.2	6.1	3.4	1.7 below.

Dated: February 3, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-3292 Filed 2-13-86; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-5-FRL-2970-5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The State of Indiana requested that USEPA change the Total Suspended Particulates (TSP) attainment status designation from unclassifiable to attainment for four townships in Wayne County, Indiana. USEPA is (1) disapproving the redesignation request for Wayne Township, and (2) approving the redesignation request for Webster, Center and Boston Townships. In addition, the State of Indiana submitted a request to revise the Indiana State Implementation Plan (SIP) for TSP for Richmond State Hospital. USEPA is approving a revised emission limit for this facility.

EFFECTIVE DATE: This final rulemaking becomes effective on March 17, 1986.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6036, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

Wayne County Redesignation

The current designation under section 107 of the Clean Air Act for TSP in Wayne County, Indiana is that the area included within Boston, Center, Wayne, and Webster Townships in Wayne County, Indiana is unclassifiable and the remainder of the County is designated attainment. (46 FR 543401; November 2, 1981.) On September 11, 1984 the State of Indiana requested USEPA to revise the TSP designation for Webster, Center, Wayne and Boston Townships from unclassifiable to attainment. To support its request, the State of Indiana submitted 8 consecutive quarters (July 1982–August 1984) of air quality data from two sites in Richmond, which is located in Wayne Township in eastern Wayne County. No violations of the TSP NAAQS were measured during this period.

The State of Indiana also submitted air quality modeling analyses which indicate, however, that the two monitors are not located in the area of poorest air quality in Wayne Township. These analyses project secondary nonattainment for a small area in the northern part of the City of Richmond.

The available modeling and monitor data do indicate that the TSP primary and secondary NAAQS are attained in Webster, Center, and Boston Townships in Wayne County. The technical data are discussed in more detail in the technical support document which is available at USEPA's Region V office.

On May 6, 1985 (50 FR 19038), USEPA proposed to disapprove the redesignation of Wayne Township from unclassified to attainment for TSP, and to propose approval of the redesignation of Webster, Center, and Boston Townships in Wayne County to full attainment.

There were no public comments received by the Agency on this proposal. Therefore, based on the available technical data from the State, USEPA disapproves the redesignation of Wayne Township and approves the designation of Webster, Center, and Boston Townships in Wayne County to full attainment for TSP. The remainder of the County will remain designated attainment.

Richmond State Hospital SIP Revision

On March 28, 1984, the State of Indiana requested that Richmond State Hospital, a major TSP source in Wayne County, be permitted to utilize its four boilers simultaneously and increase its TSP emission limit to 0.60 lbs/MMBTU. The current federally approved SIP for Richmond State Hospital allows simultaneous operation of the four boilers, but restricts each boiler to a 0.35 lb/MMBTU emission limit. In response to the State's original request, USEPA determined that this revision could not be approved because the State had not submitted an air quality modeling analysis consistent with USEPA reference modeling methodology which demonstrate that the revision would not cause or contribute to a violation of the TSP standards.

On September 11, 1984, the State submitted additional information which

supported the earlier request to revise the SIP for Richmond State Hospital. As a supplement, USEPA modeled the Richmond State Hospital's emission increases. USEPA also determined that because the Prevention of Significant Deterioration (PSD) baseline date has not been triggered in Wayne County for TSP, the increase in allowable emissions from Richmond State Hospital does not consume PSD increment.

On May 6, 1985 (50 FR 19038), USEPA proposed approval of the revised emission limit as a revision to the SIP. A detailed discussion of USEPA's action can be found in the notice of proposed rulemaking and the technical support docuement which is available at USEPA's Region V office.

USEPA has also analyzed whether this revision is consistent with USEPA's stack height regulation (July 8, 1985; 50 FR 27892). USEPA has determined that the emission limitation for Richmond State Hospital is not affected by illegal credit for stack height or any other dispersion technique because the present stack configuration is the same as it was on December 31, 1970. (See Section 123 of the Clear Air Act and USEPA's regulations on stack height credit, July 8, 1985; 50 FR 27892).

In response to this action, only the City of Richmond submitted comments. The City of Richmond formally supported the State of Indiana's position of allowing Richmond State Hospital to utilize its four boilers simultaneously and increase its TSP emission limit to 0.60 lbs/MMBTU. As a result of the aforementioned analyses, USEPA approves the revised emission limit as a revision to the SIP.

The Office of Management and Budget has exempted this rulemaking from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 7, 1986.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Parts 52 and 81, are amended as follows:

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

PART 52—[AMENDED]

2. Section 52.770 is revised by adding new paragraph (c)(54) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(54) On March 28, 1984, Indiana submitted a revised TSP emission limitation for Richmond State Hospital, Wayne County, Indiana. This limitation replaces the one in 325 IAC 6–1–14 which was previously approved at (c)(34).

(i) *Incorporation by reference.* (A) On January 13, 1984, Indiana issued to Richmond State Hospital an amendment to operating permit, 89–04–85–0153, which revised its TSP emission limitations for the four boilers to 0.60 lbs/MMBTU with an annual total limit of 452 tons/yr.

* * * * *

PART 81—[AMENDED]

3. Section 81.315 is amended by revising the Wayne County designation in the Indiana Table for Total Suspended Particulates (TSP) as follows:

§ 81.315 Indiana.

INDIANA—TSP

Designated Area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Wayne County:				
Wayne Township			X	
The remainder of Wayne County				X
* * * * * * *				

[FR Doc. 86–3277 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 85–87; FCC 86–28]

Common Carrier Services; Preemption of Local Zoning and Other Regulation of Receive-Only Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This action adopts a final rule stating Commission policy with respect to federal preemption of local regulation of satellite earth stations. This rule is necessary to ensure that non-federal regulations do not interfere unreasonably with the federal right to construct and use antennas to receive satellite delivered signals. Under this rule, non-federal regulations which differentiate in their treatment of satellite earth stations are preempted unless they have a valid health, safety or aesthetic objective and do not impose unreasonable limitations on reception. Regulation of transmitting antennas is similarly preempted except that non-federal health and safety regulation is not preempted.

EFFECTIVE DATE: March 14, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman, (202) 634–1781.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Communications common carriers, communications equipment, Radio, Satellites.

Report and Order

In the matter of Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations (CC Docket No. 85–87).

Adopted: January 14, 1986.

Released: February 5, 1986.

By the Commission: Commissioner Dawson dissenting and issuing a statement.

I. Introduction

1. On March 28, 1985 the Commission issued a *Notice of Proposed Rulemaking* (*Notice*) [1] stating its initial

[1] Preemption of Local Zoning Regulations of Receive-Only Satellite Earth Stations, 50 FR 13986 (April 9, 1985).

determination to adopt a rule preempting certain state and local zoning or other regulations of satellite receive-only antennas.[2] We have received extensive comments on a wide variety of issues raised in connection with this proceeding and are now in a position to adopt a final rule. The rule we are adopting is:

State and local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations

(a) Have a reasonable and clearly defined health, safety or aesthetic objective; and

(b) Do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or to impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment.

Regulation of satellite transmitting antennas is preempted in the same manner except that state and local health and safety regulation is not preempted.

2. This rule differs from that originally proposed [3] reflecting modifications made in response to the comments submitted.[4] Due to the large number of documents filed in this matter,[5] we will not discuss each individually. However, all parties' suggestions have been fully considered.

3. In making our initial proposal, we determined that we had the legal authority to preempt [6] and that a limited preemption of state and local zoning regulation was warranted.[7] The objective of the *Notice* was to solicit comments on the implementation of such a preemption, recognizing our obligation to ensure that federal communications policies are not frustrated while also acknowledging the strong, non-federal interest in land use regulation.[8]

II. Comments

A. Authority to Preempt

4. Commenters in agreement with our decision to preempt analyzed precedent supporting such Commission action.[9] Preemption, according to proponents, is fully consistent with Commission policy, has been sustained in court challenges,[10] and is not limited to cases in which discrimination is found.[11]

5. Parties opposing preemption [12] argued that the federal interest in the availability of satellite-delivered service is insufficient to rebut the presumption of validity which attaches to local regulation of traditionally local matters.[13] The League stated that municipal regulation does not directly affect the availability of Commission licensed satellites. Where alternative methods to receive video entertainment programming exist, (i.e. cable television, direct broadcase satellites, multipoint distribution systems), a federal preemption allowing the unregulated proliferation of satellite antennas where no fee is paid for programming will hurt these other services by depriving them of revenue which will in turn hurt the satellite industry by affecting its financial base.[14] The League argues that by eliminating local regulation the Commission may harm rather than advance its federal objective.

6. Section 705 of the Communications Act, 47 U.S.C. 705, according to the League, creates only a limited "sanction" of reception of satellite delivered programming. Brooks Satellite, Inc. (Brooks), in contrast, calls section 705 rights "unequivocal" and "fundamental." [15] The League would limit the application of a case relied upon for preemption authority[16] on the basis of the "unique characteristics of MDS" where entry regulation was preempted because a reduction of reception points in one state placed a burden on interstate commerce.[17]

7. The McLean Citizens Association (McLean Citizens) stated that the cases relied on as precedent for Commission preemption were inapplicable because they involved state regulation of entry by new communications services. Comments filed by United States Satellite Broadcasting Co., Inc. (USSB), although favoring preemption, cautioned that the Commission must take care to respect the "legitimate land use concerns of state and local governments." USSB agreed with McLean Citizens that there is a distinction between federal preemption authority exercised under the Interstate Commerce Clause when the regulations are economic as opposed to based on state police powers. It stated that the Commission should try to harmonize its rule with legitimate zoning enactments[18]

8. The League also asserted that the record before the Commission does not establish the existence of a problem and that therefore Commission action is unjustified.[19] Other parties disagreed, offering examples of ordinances which would violate the proposed preemption rule, detailing individual problems with restrictive zoning, and citing cases in which a denial of an application to install an antenna was sustained by court action, thus preventing the reception of programming.[20]

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[2] This action was taken in response to a Petition for Declaratory Ruling filed by United Satellite Communications, Inc. Because of the significant local interest in the issues involved and due to the limited record compiled, especially with respect to the views of local governments, we issued a Notice of Proposed Rulemaking soliciting further comments.

[3] The proposed rule read as follows: "State and local zoning or other regulations that discriminate against satellite receive-only antennas in favor of other communications facilities are preempted unless they have a direct and tangible relationship to reasonable, valid, demonstrable and clearly articulated health, safety or aesthetic objectives and constitute the least restrictive method available to accomplish such objectives."

[4] Several parties have made specific alternative rule proposals. Although none of these suggestions has been adopted in full, aspects of these proposals have been incorporated in our final action. *See, e.g.*, Comments of RCA Communications, Inc. (RCA), Hughes Communications, Inc. (Hughes), and Satellite Television Industry Association, Inc. (Space).

[5] Approximately 170 comments were filed in this proceeding in addition to many informal letters indicating interest and over 2000 postcards supporting preemption. A list of the commenters is attached as Appendix A.

[6] *Notice* at paras. 9–21.

[7] *Id.* at para. 30.

[8] *Id.* at para. 17.

[9] *See e.g.*, Comments of Hughes, Space, Cable Com. Corp.

[10] Comments of SPACE, Curtis Mathes Corp./Southern Satellite Systems, Inc./Spectrodyne, Inc. (Curtis Mathes), RCA.

[11] Comments of Brooks Satellite, Inc. at 4.

[12] At the suggestion of the National League of Cities (League), many cities stated objections to our proposed preemption. These were (1) the action is an improper federal interference in traditionally local matters; (2) the Commission does not have authority to preempt under the Communications Act; (3) local law provides adequate remedies; (4) preemption would impose unreasonable administrative burdens on states and localities. *See, e.g.*, Comments of Manhattan Beach, Ca.

[13] Space contends that this assertion is incorrect because the lawfulness of preemption action depends upon the impact local regulation has on federal objectives and not on the degree of local interest. Space comments at 6.

[14] League Comments at 5.

[15] Comments of Brooks at 11.

[16] In the Matter of Orth-O-Vision, Inc., 69 FCC 2d 657 (1978), *aff'd sub nom.* New York State Commission on Cable Television v. FCC, 669 F.2d 58 (2d Cir. 1982) (Ortho-O-Vision). The League does not comment on our order in Earth Satellite Communications, Inc., 95 FCC 2d 1223 (1983), *aff'd sub nom.* New York State Commission on Cable Television v. FCC, 749 F. 2d 804 (D.C. Cir. 1984) (Earth Satellite) which preempted state regulation of SMATV systems where signals were delivered by satellite.

[17] League comments at para. 4.

[18] USSB cited Hybud Equipment Corp. v. Akron, 645 F.2d 1187, 1194 (6th Cir. 1981) in support of this proposition. The constitutional basis of the Communications Act is the Interstate Commerce Clause.

[19] League Comments at 11 quoting Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977).

[20] Space comments at 5–8; USSB Comments at 1–3. Other parties' comments described particular

Continued

9. A final objection by the League is that the Commission's preemption will result in a significant amount of litigation and necessitate review by either the Commission or the courts. Because the proposed rule's standards are vague, judicial review would result in inconsistencies and agency review would impose extraordinary burdens on the Commission and on local authorities. Space replied that the adoption of a national standard would reduce litigation and encourage accommodation of disputes between antenna users and communities.[21]

B. Implementation of Rule

10. Most parties, whether in favor of, or opposed to, preemption, offered suggestions with respect to the scope of the specific rule to be adopted. Many believed that requirements of the rule were vague and unclear and stated that it did not offer sufficient guidance to local communities [22] or would not be susceptible to application in specific cases.[23]

11. Some commenters suggested that the "discrimination" requirement be stricter and invalidate any regulation that discriminates in effect as well as on its face.[24] Others asserted that the phrase "in favor of other communication facilities" be deleted because this created a harder burden for those challenging local action.[25] Several parties suggested deleting the entire discrimination requirement, stating that the proper focus of preemption should be on the effect of the local regulation on federal objectives and not on differences in treatment.[26]

12. It was also urged by opponents that we delete the "least restrictive means" test. They claimed that requiring the least restrictive alternative would prevent zoning for legitimate objectives such as historical preservation.[27] Space argued that the least restrictive means test was consistent with first amendment requirements where local regulations were restricting constitutionally protected communications.[28]

13. Several cities and representative groups stated that the proposed rule's general exception for ordinances enacted pursuant to police power objectives was duplicative as general zoning law requires that regulations be based on legitimate health, safety or, in some cases, aesthetic objectives.[29] They asserted that such a rule was thus unnecessary. Some preemption advocates also objected to this criterion because it would allow circumvention of the discrimination requirement by creating multiple loopholes.[30] SPACE asked that any aesthetic zoning power be limited to "bona fide historic districts" that also restrict other "accoutrement or modern living." [31] American Satellite suggested that any health hazard relied upon by local authorities be required to be documented.[32]

14. Some commenters suggested preemption guidelines based on size and land use characteristics of the proposed antenna site. For example, the International Association of Satellite Users and Suppliers (IASUS) proposed an absolute preemption for construction in industrial, commercial and high density areas as well as for antennas of less than 3.5 meters with a limited preemption allowing non-aesthetically based regulation of antennas over 3.5 meters in low density single family zones.[33]

C. Alternative Approaches

15. The APA asserts that the Commission should avoid the vagueness of the proposed rule by exercising preemption on a case-by-case basis and only in those instances where one communications technology is favored over another. Although acknowledging that the Commission's administrative burden might be increased under this approach, the APA maintained that there would only be a few cases of egregious discrimination necessitating review.[34]

16. Many parties supporting preemption action urged that any final rules be extended to transmitting as well as receiving antennas despite our tentative decision to limit consideration to the latter.[35] The rationale offered for this suggestion is that many smaller transmitting antennas are not visually or otherwise different from receive-only facilities and thus should not be subject to discriminatory local regulation.[36] These commenters argue that the record established in this proceeding is sufficient to justify Commission action with respect to transmitting antennas.[37] It was also suggested that the Commission, by establishing the ANSI standards for regulation of radiation levels of transmitting equipment, has already preempted local control for health objectives.[38]

17. Other parties asserted that because we had stated a tentative conclusion to limit the rule under consideration to receive-only antennas, a new rulemaking might have to be established to consider preemption of local regulation of transmit antennas.[39]

18. Parties on both sides of the issue requested that in addition to, or instead of, a general rule, we should give examples of those ordinances or regulations that would be acceptable under our preemption standards.[40]

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difficulties that individual companies have encountered. *See, e.g.*, Comments of Atlantic Satellite, Spectradyne, American Satellite, Direct Broadcast Satellite Association, Curtis Mathes.

[21] Reply Comments of Space at 8–9.

[22] Comments of American Planning Association (APA), Mutual Broadcasting System, Inc.

[23] Comments of National Satellite Cable Association and Hughes.

[24] Comments of USSB at 3.

[25] Comments of Equatorial Communication Services (Equatorial) and Associated Press.

[26] Comments of Curtis Mathes, Cablecom and Hughes. *Contra*, Comments of M/A Com and Equatorial urging that a clear stand be taken against discrimination.

[27] Comments of National Trust for Historic Preservation. *See also* Comments of National Capital Planning Association.

[28] Comments of Space at 12–15.

[29] *See* Comments of APA. *See also* Reply Comments of Space at 13. Comments of the National Capital Planning Commission at 7 requested the inclusion of "security" as a criteria but did not elaborate.

[30] Comments of International Association of Satellite Users and Suppliers at 6.

[31] Comments of Space at 17. Cable Com. Corp. at 7 suggested eliminating aesthetics as an acceptable local objective.

[32] Comments of American Satellite at 1.

[33] *See also* Comments of M/A Com, Brooks, USSB, Sat Time Inc., Direct Broadcast Satellite Association (DBSA) and National Association of Broadcasters (NAB) with respect to suggested size criteria. *Cf.* Comments of Contemporary Communications Corp. which cautioned against emphasis on size or physical characteristics of antennas.

[34] Comments of APA at 9. Many cities agreed with APA's recommended approach. *See e.g.* Cincinnati, Ohio; Tuscaloosa, Ala.; Warwick, R.I. *See also* Comments of David Preece.

[35] *See, e.g.*, Comments of Equatorial; Hughes; IASUS; RCA; Public Broadcasting Service (PBS); Satellite Business Systems (SBS); M/A Com; Atlantic Satellite; Sat Time, Inc. *See also* Comments of Contemporary Communications Corp. which urged extension to all telecommunications antennas.

[36] Comments of PBS. *See also* Comments of RCA which suggest a presumption against local regulation of antennas under 2 meters in order to encourge construction of small antenna business networks to operate in the 12/14 GHz frequency bands.

[37] *See* Reply Comments of PBS.

[38] *See* Comments of Atlantic Satellite citing LIMA Partners vs. Northvale, Docket No. L–17049–84 P.W. (Superior Court of New Jersey, Law Division, Bergen County, May 10, 1985) where a state court reached this conclusion.

[39] *See* Comments of NAB. Atlantic Satellite has filed a petition requesting the establishment of a separate rulemaking to consider preemption of local regulation of satellite transmitting antennas. RM–5021.

[40] *See* Comments of National Capital Planning Association at 8; Curtis Mathes at 5.

Space, however, cautioned that such an approach was inadvisable because in limiting our rule with such examples, a wide variety of "local abuses" would not be properly addressed.[41]

D. Other Issues

19. The League suggested that our preemption action would violate both the National Environmental Policy Act (NEPA) and the Regulatory Flexibility Act.[42] With respect to the former, it stated that under NEPA standards, the Commission is obligated to consider the authorization of an antenna over 30 feet in diameter or those to be built in an historic or scenic area a major action requiring an environmental impact statement.[43] The League contended that a similar approach is required in adopting a final preemption rule. Space, however, states that because the Commission is not authorizing any construction here and because the receive-only antennas under consideration are not required to be licensed, there is no inconsistency with NEPA. In addition, receive-only antennas usually do not approach thirty feet in height or diameter and therefore even if this rulemaking were an NEPA defined "action," no environmental policies have been implicated.[44]

20. The League also asserts that the *Notice* did not comply with the Regulatory Flexibility Act.[45] According to the League, we did not consider alternative approaches such as exempting small cities from preemption or allowing any compliance with our rules to be voluntary. Space disagreed, asserting that any exemption for small jurisdictions would circumvent Commission objectives in proposing a uniform regulatory policy. In addition, the rule would not impose any new record keeping or other additional administrative filing requirements on small cities, a determination which was made in our Initial Regulatory Flexibility Statement.

21. The National Trust for Historic Preservation (Trust) stated that the Commission illegally ignored the provisions of the National Historic Preservation Act by failing to consult with the Trust prior to enacting any rule. In addition, the Trust asserted that because historic preservation is also a federal objective, preemption is not authorized.

22. Both the District of Columbia and the National Capital Planning Association asserted that because zoning regulation in the District is promulgated under federal auspices, the Commission cannot preempt these regulations.

III. Discussion

A. Preemption

23. In our *Notice* we concluded that we had the authority to preempt non-federal regulations which stood as obstacles to the accomplishment of federal objectives. We determined that the broad mandate of Section 1 of the Communications Act, 47 U.S.C. 151, to make communications services available to all people of the United States and the numerous powers granted by Title III of the Act with respect to the establishment of a unified communications system [46] establish the existence of a congressional objective in this area. More specifically, the recent amendment to the Communications Act, 47 U.S.C. 705, creates certain rights to receive unscrambled and unmarketed satellite signals.[47] These statutory provisions establish a federal interest in assuring that the right to construct and use antennas to receive satellite delivered signals is not unreasonably restricted by local regulation.

24. As stated in our *Notice*,[48] when "state regulation stands as an obstacle to the accomplishment of a congressional purpose," such regulation is subject preemption.[49] Our conclusion was that the record showed local and state regulatory interference with established federal objectives and thus some of preemption was warranted.

25. The comments submitted in this proceeding do not support a contrary conclusion and thus our final rule will implement a limited preemption. The arguments offered by commenters opposed to preemption state that a federal objective has not been established because other means of obtaining video programming are available and that a preemption in this proceeding would harm other services.[50] This position ignores the clear statement in our *Notice* that we will not permit a state to arbitrarily favor one particular communications service over another and that local ordinances which engage in arbitrary discrimination will be preempted. The existence of alternative communications media is not a sufficient justification for discriminatory local regulations. In many cases, satellites deliver a wider range of programming than that available over other media such as cable television systems or MDS. Thus, local regulation may deprive local residents of access to the broader range of choices available to antenna users in other parts of the country. In addition, this Commission repeatedly has emphasized its policies to maximize consumer choices by developing a competitive marketplace for the provision of telecommunications goods and services.[51]

26. If individuals cannot use antennas to receive satellite delivered signals because of discrimination or excessive state and local regulation, their right of access as established by section 705 to interstate communications delivered by satellite will be useless.[52] Whether the use of satellite antennas will cause economic harm to other communications industries is not a proper basis for local regulations that effectively deny citizens direct access to satellites. Such regulations would frustrate our competitive regulatory policies which have been promulgated to provide for a variety of services by consumers. It would be contrary to those policies to permit discriminatory local regulation which reduces the range of choice.

27. The League and most commenting cities [53] have emphasized the traditionally local nature of zoning regulations. We recognized this concern in our *Notice* [54] and it was this factor

[41] Comments of Space at 13.

[42] 42 U.S.C. 4321 *et seq.*; 5 U.S.C. 601 *et seq.*

[43] Comments of League at 17.

[44] Reply Comments of Space.

[45] Comments of League at 18. We are considering this issue raised by the League's comments despite the fact that it failed to submit separate comments directed to our initial Regulatory Flexibility Analysis as required by paragraph 34 of our *Notice*.

[46] Earth Satellite Communications, Inc., note 16, *supra, citing* General Telephone Co. of California v. FCC, 413 F.2d 390, 398, 401 (D.C. Cir. 1969).

[47] The state court cases cited by the League at pp. 9–10 of its comments for the proposition that the Communications Act does not authorize preemption of zoning involve questions with respect to height limitations on amateur radio facilities. In this proceeding, we are not preempting reasonable, non-discriminatory local restrictions. In addition these cases do not involve section 705 rights.

[48] *Notice* at para. 9.

[49] Capital Cities Cable, Inc. v. Crisp, 104 S. Ct. 2694 (1984). *See also* Michigan Canners and Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board, 104 S. Ct. 2518 (1984); Florida Avocado Growers v. Paul, 373 U.S. 132 (1963); Hines v. Davidowitz, 312 U.S. 52 (1941).

[50] The League claims that cable television systems are the primary method of delivering video programming and that existence of a dual federal-local regulatory scheme for that service precludes preemption action with respect to satellite antennas.

[51] *See e.g.*, Policy and Rules Concerning rates for Competitive Common Carrier Service and Facilities Authorizations Therefore, 95 FCC 2d 554 (1983).

[52] *See Notice* at para. 10.

[53] *See, e.g.*, Comments of Mankato, Minn.; Aurora, Colo.; Delaware County Planning Dept.

[54] *Notice* at para. 15. *See also* Columbia Plaza Ltd. Partnership v. Cowles, 403 F. Supp. 1337 (D. D.C. 1975).

which resulted in our original conclusion to propose a limited preemption. Despite this recognition, it must be emphasized that the relative importance to states or local jurisdictions of their own laws is not the proper focus in a decision to preempt.[55] The Supreme Court has recently held that a local transit authority was required to comply with the federal minimum wage and overtime requirements. The transit authority claimed it was immune from federal regulation when operating in areas of traditional local government functions. The court held that "a rule of state immunity from federal regulation that turns on a judicial appraisal of whether a particular governmental function is 'integral' or 'traditional' " is unworkable.[56] The same principle applies in this case in that it cannot be argued that preemption is automatically precluded merely because zoning has been called a traditionally local matter.

28. Other parties have questioned our reliance on prior Commission actions that have preempted state regulation of MDS and SMATV systems [57] pointing out that these cases involved non-federal economic regulations and not those promulgated under states' police powers such as zoning.[58] An analysis of cases cited which address this issue, however, demonstrates that the question of preemption authorized under the Interstate Commerce Clause is not dependent on whether the regulation at issue is economic but on whether its effect on interstate commerce is more than "incidental." [59] In this proceeding, the communications delivered by satellite are unquestionably interstate in nature and, as we found in the *Notice*, denial or reasonable access to antenna facilities significantly, not incidentally, interferes with individual rights to receive such communications.

29. An additional contention raised by commenters opposed to preemption is that the existence of a problem has not been sufficiently established to warrant action. However, the volume of comments submitted which detail significant problems with local zoning encountered by antenna users leads to a contrary conclusion.[60] In addition, the existence of cases in which an antenna user was able to obtain a favorable court result is insufficient evidence upon which to base a conclusion that a rule is unnecessary, especially when other cases to the contrary exist.[61] Whether a judicial remedy might be available in some cases and to those who can afford litigation is not determinative of our ability or of the necessity to preempt state regulations when they are obstructing federal objectives.

B. Final Rule

30. Most commenters urged that we make adjustments to our final rule that would clarify its requirements and offer more effective guidance to local communities.[62] In formulating the rule adopted here, we have taken into consideration the criticism of our original proposal and to the extent possible in a general policy statement, have made our standard clearer and easier to apply to specific situations.

31. We have retained the criterion that a preemptible regulation must differentiate but have modified the rule to apply only to antenna facilities. This change is based on our conclusion that to require comparable treatment for antennas and cable systems would be unworkable in light of their distinct technologies.[63] This action is not a retreat from our condemnation of ordinances such as that of Chicago which prompted the petition initiating this rulemaking.[64] The Chicago ordinance imposed its stringent procedural requirements only on applications for satellite antennas and thus would differentiate in the treatment of other antenna facilities. This ordinance would be subject to preemption under our final rule because it would not comply with paragraphs (a) and (b).

32. Non-federal regulations may impose, under our adopted rule, reasonable requirements on all antennas as long as these local standards are uniformly applied and do not single out satellite receive-only facilities for different treatment.[65] An ordinance attempting to regulate all antennas by enacting restrictions on those of a certain shape, for example a ban on all spherical antennas, would differentiate between satellite antennas and other types of facilities and therefore would be preempted under our rule. Communities wishing to preserve their historic character may limit the construction of "modern accoutrements" provided that such limitations affect all fixed external antennas in the same manner.[66] In adopting this rule we intend that it be a valid accommodation of local interests as well as of two federal interests, namely promoting interstate communications and historic preservation.[67] Communities which are truly concerned with preserving their unique historic character may do so if they do not discriminate against satellite receive-only antennas.

33. If a community chooses to enact an ordinance which differentiates in its treatment of different types of antennas, it must bear a high burden. Our objective is to ensure that satellite receiving antennas are not treated less favorably than other antenna devices such as Amateur Radio antennas and Satellite Master Antenna Systems (SMATVs).[68] A community must

[55] Free v. Bland, 369 U.S. 663, 666 (1962). *See also* Fidelity Federal Savings and Loan Assoc. v. De La Cuesta, 458 U.S. 141, 153 (1982).

[58] Garcia v. San Antonio Metropolitan Transit Authority, 105 S. Ct. 1005, 1016 (1985).

[57] Orth-O-Vision, *supra* note 16; Earth Satellite, *supra* note 16. *See* Canton Township v. Brenner, No. 86 CT3551 (35th Dist. Ct. Plymouth, Michigan September 26, 1985) at 10 where the Court stated that the Commission in its Earth Satellite order has already preempted local zoning regulation "to a significant extent."

[58] Comments on McLean Citizens.

[59] Hybud Equipment Corp. v. Akron, 654 F.2d 1187, 1194 (6th Cir. 1981) *citing* Hughes v. Oklahoma 441 U.S. 322 (1979).

[60] *See e.g.*, Comments of Space discussing ordinances of Baltimore, Md., and Gaithersburg, Md. *See also* note 20, *supra*.

[61] For a favorable result, *see* Morgan v. Coral Gables, #83-42793 C.S. 22 (Cir. Ct. Fla. June 18, 1984); Canton v. Brenner, No. 85 CT 3551. For a contrary result, *see* Minars v. Rose, #13686/84, (Special Term, Nassau Co., NY, March 25, 1985); Gouge v. Snellville, 287 S.E.2d 539 (Sup. Ct. Ga. 1982). *See also* Reply Comments of Space at 7-8.

[62] We adopt USSB's suggestion that our preemption apply to all non-federal action including ordinances, statutes and regulations. In addition, we have received comments filed by Max Dean Parsons which urge extension of preemption to private restrictions such as those found in deed convenants. This issue was not raised in our Notice and raises some issues not presented in a consideration of local governmental action. We decline to rule on it in this proceeding and deny the request.

[63] *See* Comments of Hughes which indicate that construction approval requirements may differ for small satellite antennas and inner-city cable construction.

[64] *See Notice* at paras. 17-21. Any ordinance enacted solely for the purpose of giving economic protection to a cable system might be invalid under state law. *See* Comments of League at 12 which cites 6 McQuillin, The Law of Municipal Corporation, Sec. 25.61 at 161 (3d. ed. 1971) for the proposition that zoning ordinances must be equal in operation and effet.

[65] Some Commenters claim that the impact on interstate commerce and not discriminatory treatment is the proper focus of a preemption action. *See, e.g.*, Comments of Curtis Mathes and Hughes. It is precisely our concern that states are impermissibly burdening interstate satellite service that leads us to issue this preemption.

[66] *See* Comments of National Trust, National Capital Planning Association, Space.

[67] The National Trust states that sections 106 & 110 of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, requires us to consult with them prior to rulemaking. Even if this assertion is correct, the National Trust had full opportunity to comment and its comments have been considered in formulating the final rule.

[68] *See, e.g.*, Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, 50 FR 38813 (September 25, 1985) where we stated: "State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must

Continued

demonstrate that its regulation meets both paragraphs (a) and (b) of our rule. With respect to paragraph (a), we agree with the commenters who said that our original proposal should be recast to reduce undefined and vague terms.[69] The rule has been revised in an effort to respond to that criticism, but any general policy formulation will have aspects subject to varying interpretations.

34. We have retained the use of health, safety and aesthetic objectives[70] but have merely required these to be "reasonable" and "clearly defined." These terms are readily susceptible to application by local authorities and give some flexibility in the application of local regulations to individual locations.[71] To be more specific in a general national policy statement would be inadvisable.[72] In addition, requiring local authorities to justify a differentiation in treatment will help ensure that local zoning power is not used to restrict unreasonably the installation of satellite receive-only antennas.

35. Although many commenters have argued that all aesthetic regulation should be preempted,[73] or severely restricted,[74] under prevailing law, aesthetics are permissible regulatory objectives. The preservation of such community values has been sustained even in light of first amendment challenges. Thus, any preemption which failed to recognize this strong local interest would not be sound.[75]

36. In addition to defining the reasonable objective of an ordinance which differentiates in its treatment of antennas, a community is limited in the types of restrictions it can apply. It cannot unreasonably limit or prevent reception by requiring, for example, that a receive-only antenna be screened so that line of sight [76] is obscured. Moreover, an ordinance which discriminates cannot impose size restrictions only on receive-only antennas which would effectively preclude reception.[77]

37. As a further standard we are requiring that any local restriction which fails to meet our discrimination tests must not impose costs which are excessive in light of the costs of the equipment. Again, in a general policy statement, it is inadvisable to specify what "excessive" would mean in a particular situation but we are confident that local authorities who are familiar with local situations will be capable of making accurate distinctions.[78] If antenna users are not satisfied with the results of local determinations, it would be within the ability of a court to make legal determinations of reasonableness or excessiveness.

38. The requirements of paragraph (b) are more specific and more easily applied than our original "less restrictive means" test. We agree with some commenters that the proposed requirement would be difficult to apply and might lead to unintended results.[79]

C. Alternatives

39. It has been suggested that instead of adopting a general policy statement, we should review specific zoning cases to determine if preemption is warranted in individual situations.[80] We rejected this approach in our *Notice* and disagree with the APA and others that the administrative burden created by case-by-case review will be minimal. Initially, as we stated in the *Notice*, we do not intend to operate as a national zoning board. Those cities commenting have consistently indicated their opposition to Commission involvement in local disputes and such individual review will increase rather than decrease a national presence. By issuing a rule, we expect that local authorities will conform their regulations to our standards and that they will make determinations which are in the best interests of their communities that reflect federal policy. Commission intervention in individual cases as a general policy will not further this objective.

40. We also disagree with the suggestion that if we impose a stringent threshold discrimination test, we need not adopt a general rule and could minimize the extent of Commission involvement in a policy which would instead require case-by-case review.[81] There has been increased interest and publicity surrounding this issue and we conclude that the large number of cases which might be presented for individual review would place a severe burden on our administrative process. Satellite antenna users who are dissatisfied with the results of any local zoning decision can use the standards adopted here in pursuing any legal remedies they might have.[82] In addition, we would entertain requests for further action if it appears that local authorities are generally failing to abide by our standards.[83] Any party requesting Commission review of a controversy will be expected to show that other remedies have been exhausted.

41. Many of the comments submitted urge us to include transmitting antennas in our preemption. Transmitting equipment, while visually similar to receive-only earth stations, does raise regulatory issues with respect to health

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be preempted." *See also* Earth Satellite Communications, Inc., *supra* note 16, where we stated: "we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the nonfederal regulation is applied in a non-discriminatory manner. Local authority over such concerns must be exercised so that a local jurisdiction in fact does not inhibit or interfere with the delivery of interstate signals through the exercise of its authority."

[69] Such terms as "valid", "clearly demonstrable" and "direct and tangible relationship" were in this category. *See* comments of National Satellite Cable Association.

[70] We find that the National Capital Planning Association's suggestion to include "security" as a criteria has no relevance to the issues raised here as national security issues relating to communications are subject to federal, not state, jurisdiction.

[71] It was such flexibility that many cities insisted was necessary if they were to exercise legitimate zoning powers. *See* Comments of David J. Preese; League at 7.

[72] For example, we cannot say that the requirements of 10 as opposed to 5 bushes of a certain kind or size for screening of satellite antennas is unreasonable without becoming involved as a national zoning arbitrator, a result we sought to avoid in our *Notice*.

[73] *See* Comments of Curtis Mathes.

[74] *See* Comments of Space.

[75] *See Notice* at n. 21 and cases cited there where we noted the Supreme Court's requirements of careful scrutiny of local aesthetic regulations which involve first amendment considerations. Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981). *See also* Canton v. Brenner, No. 85 CT 3551, L.I.M.A. Partners v. Borough of Northvale, Doc. No. 17049-84(PW) (May 10, 1985). Because we are relying on our statutory authority under the Communications Act as a basis for preemption, we are not reaching first amendment issue raised in connection with this proceeding.

[76] A receive-only antenna must have an unobstructed line of sight to a satellite in order to receive signals. It has been asserted by SPACE that cities, in enacting zoning ordinances, were sometimes unaware of the technical requirements for reception. Reply Comment at 4.

[77] Under current technology, an antenna must be at least 8 to 12 feet in diameter to adequately receive video signals transmitted by satellite. Space Reply Comments at 15 n. 7. Antenna size for Direct Broadcasting Service reception can be much smaller but that service has not as yet been instituted.

[78] This is the type of flexibility that cities have said they need to effectively enforce their zoning power. *See* Comments of Midland, Mich.; Pinellas Park, Fla.; Carmel by the Sea, Ca.; Connecticut Siting Council. Examples of excessive costs might be high filing fees or unreasonable hearing requirements.

[79] *See, e.g.*, Comments of Trust at 2.

[80] *See* para. 14 *supra*.

[81] Our preemption is broader than that suggested by APA by requiring that discriminatory ordinances be justified.

[82] As Hughes observes "the preemption standard is intended to be operational, and enforceable by private parties, without further involvement of the agency." Comments at 8.

[83] *See* Comments of USSB.

and safety because of the emission of radio frequency radiation (RF radiation). This Commission has declined to preempt state or local RF radiation standards but has reserved this issue if it is brought to our attention that such standards are "adversely affecting a licensee's ability to engage in Commission authorized activities."[84] On the record before us, it would be premature to preempt health or safety standards, especially where our *Notice* indicated that issues with respect to transmitting equipment would be excluded.[85]

42. However, we see no similar impediment to the preemption of discriminatory, non-justified aesthetic regulation of transmitting antennas. There are no significant differences in the visual appearance of transmit and receive-only facilities and the same federal interest exists with respect to local restriction of access to satellite services. Thus, if a state or local regulation based on aesthetics differentiates between satellite transmitting antennas and other types of antennas, it is preempted as described in the rule adopted herein unless it has a reasonable aesthetic purpose and does not operate to unreasonably restrict or prevent transmission. At this time, we are reserving the issue of preemption based on the health and safety aspect of RF radiation for consideration in a separate proceeding.[86] In taking this action, however, we are not preempting non-federal authority distinctions based on land use criteria such as those designating certain areas for residential, commercial or other uses.

43. We decline to attach a list of acceptable sample zoning ordinances. As has been repeatedly stated here, our preemption is intended to afford local communities some flexibility. Sample laws would curtail this flexibility. Moreover, a list of specific rules would be incomplete and could lead to circumvention of our objectives.[87]

D. Other Issues

44. We agree with Space that our rulemaking does not violate either the National Environmental Policy Act or the Regulatory Flexibility Act. We are not authorizing the construction of any antenna facilities in this proceeding but merely are stating guidelines for local authorities. Thus, the NEPA regulations with respect to "major actions" do not apply. Because we are adopting a policy which will ultimately be reflected in individual local regulations including those based on aesthetics, we are taking no action in this proceeding which significantly affects the "quality of the human environment."[88]

45. In our *Notice*, pursuant to section 603 of the Regulatory Flexibility Act, we stated that our rule would have a beneficial effect on local governments by affording guidance as to acceptable limits of governmental action. We adhere to this conclusion in adopting a final rule. Our objective in this proceeding is to avoid inconsistent local regulations which unreasonably restrict interstate communications. Any exemptions for small communities such as suggested by the League would certainly frustrate this objective. Our policies must be applied by all local jurisdictions and the commenters have not demonstrated why smaller communities should not be subject to our rule.

46. It has been argued by the District of Columbia and by the National Capital Planning Association that zoning ordinances in the District of Columbia cannot be preempted because they are promulgated under federal authority. However, it has been held that this factor is not of decisional significance in a federal preemption action.[89] With respect to federally controlled locations, it is presumed that federal authorities will follow the policy adopted here.

IV. Conclusion

47. Accordingly, pursuant to sections 151, 303, 403 and 705 of the Communications Act, it is ordered that Part 25 of Chapter I of Title 47 of the Code of Federal Regulations is amended as set forth in Appendix B, effective March 14, 1986.

48. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, we make the following determination. The policy adopted herein is intended to preempt local regulations which are interfering with the federal objective of promoting interstate satellite delivered communications. Local governments of all sizes would be affected by our rule. In addition, small businesses selling receive-only antennas would possibly be benefited by an enhanced competitive market. The National League of Cities has objected stating that we have not considered as an alternative the exemption of small governments from the rule's operation. We conclude that any such exemption would result in undesirable inconsistencies which might impede the distribution of interstate communications. There are no effective alternatives.

49. It is further ordered that the Secretary shall cause this Report and Order to be published in the **Federal Register.**

50. It is further ordered that the Petition for Declaratory Ruling filed by United Satellite Communications, Inc. is granted in part and denied in part as set forth above.

51. It is further ordered that the proceedings in CC Docket No. 85–87 are terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. Accomack-Northampton Planning Dist. Comm.
2. Agoura Hills, CA
3. Aikens, SC
4. Alameda, CA
5. Albuquerque, NM
6. Amarillo, TX
7. American Planning Assoc.
8. American Satellite Co.
9. Ames, IA
10. Associated Press
11. Atlantic, GA
12. Atlantic Sat. Communications
13. Aurora, CO
14. Avantek
15. Berkshire Nat. Res. Coun.
16. Bethlahmy, Nogah
17. Beverly Hills, CA
18. Big Bear Lake
19. Boca Raton, FL
20. Boschwitz, Sen. Rudy
21. Bothell, WA
22. Broadcast Data Corp.
23. Brooks Satellite, Inc.
24. Brunswick, OH
25. Cable Com Corp.
26. Cadillac, MI
27. Calabrese, Frank P.
28. Carbondale, IL
29. Carmel-by-the-Sea, CA
30. Carol Stream
31. Cattaraugus County
32. Cert. Local Gov't Project
33. Cincinnati, OH
34. Coldwater, MI
35. Collins, RA. & Ruby S.
36. Columbus, IN
37. Connecticut Siting Council
38. Contemporary Communications Corp.
39. Conway, SC
40. Crookston, MN
41. Curtis Mathis Corp.
42. Dearborn Hgts., MI
43. Delaware County Planning Dept.

[84] Responsibility of the Federal Communications Commission to Consider Biological Effects of Radio Frequency Radiation when Authorizing the Use of Radio-Frequency Devices, FCC 85-90 (released March 14, 1985) at para. 43.

[85] *Notice* at para. 27.

[86] The rulemaking requested in RM-5021 specifically addresses this issue. *See* note 39, *supra.*

[87] Comments of SPACE at 14.

[88] *See* 47 CFR 1.1301.

[89] Columbia Plaza Limited Partnership v. Cowles, 403 F. Supp. 1337, 1341 n.11 (Dist. Ct. D.C. 1975). In this case, the court found that the fact that the District of Columbia's rent control program was established pursuant to a federal enabling statute did not by itself indicate a congressional intent that the area of regulation should not be preempted.

44. Direct Broadcast Satellite Assoc.
45. District of Columbia
46. Donovan, William A.
47. Drenner, Don V. R.
48. Duluth, MN
49. East, Sen John P.
50. El Cajon, CA
51. Elizabethtown, KY
52. Equatorial Communications
53. Euclid, OH
54. Fairfax (County of)
55. Frankfort, KY
56. Fredericksburg, VA
57. Fullerton, CA
58. GTE Spacenet Corp.
59. Gaithersburg, MD
60. Garden Grove, CA
61. Georgia Trust for Hist. Preservation
62. Glendale, CA
63. Goldwater, Sen. Barry
64. Goldwater Resolution (Petition Supporting with signatures)
65. Gore, Sen. Albert, Jr.
66. Grover City, CA
67. Hamilton, OH
68. Hampton, VA
69. Harper Woods, MI
70. Hattiesburg, MS
71. Helms, Sen. Jesse
72. Henderson, Richard S.
73. Holt, Hon. Marjorie S
74. Howard, Charles F.
75. Hoyt Lakes, MN
76. Hughes Communications, Inc.
77. Int'l Assoc. Sat. Users and Suppliers
78. Irvine, CA
79. Iva, SC
80. Jersey City Planning Board
81. Kassebaum, Sen. Nancy Landon
82. Kasten, Sen. Bob
83. Kirkwood Kampers
84. Kurzer, Ronald S.
85. Laguna Beach, CA
86. Lake Forest, IL
87. League of Minnesota Cities
88. Lancaster, SC
89. Laxalt, Sen. Paul
90. Lexington, KY
91. Long Beach, CA
92. Los Gatos, CA
93. M/A-Com Development Corp.
94. Madison Hghts., MI
95. Malone Enterprises
96. Manhattan Beach, CA
97. Mankato, MI
98. Maplewood, MI
99. Marquette, MI
100. McLean Citizens Assoc.
101. McQueen, Robert N.
102. Melbourne, FL
103. Microband Corp. of America
104. Middletown, PA
105. Midland, MI
106. Mississippi Chapter APA
107. Modesto, CA
108. Mountainview, CA
109. Mutual Broadcasting Systems
110. Naperville, IL
111. Nat'l Assoc. of Broadcasters
112. National Capital Planning Commission
113. Nat'l League of Cities
114. Nat' Trust for Hist. Preservation
115. Nat'l Sat. Cable Assoc.
116. Neptune, NJ
117. New York, NY
118. Newport, OR
119. Niles, MI
120. Ninety Six, SC
121. North Miami, FL
122. Omnivision
123. Owatonna, MN
124. Pacifica
125. Palo Alto, CA
126. Parsons, Max Dean
127. Pawtucket City Planning Comm.
128. Pinellas Park, FL
129. Pittsford, NY (Village)
130. Plantation, FL
131. Plymouth, MI
132. Preece, David J.
133. Pressler, Sen. Larry
134. Price Municipal Corp.
135. Public Broadcasting Service
136. RCA Communications, Inc.
137. Rancho Mirage
138. Redmond, WA
139. Riverton, WY
140. Rochester, MI
141. SAT Times, Inc.
142. San Clemente, CA
143. San Mateo, CA
144. Shoreview, MN
145. Shreveport, LA
146. Satellite T.V. Inc.
147. Satellite Television Industry Association (SPACE)
148. San Buenoventura, CA
149. San Mateo, CA
150. Sanibel, FL
151. Santa Monica, CA
152. Santa Paula, CA
153. Satellite Business Systems
154. Sherwood, Glenn V.
155. Shoreview
156. Sioux City, IA
157. Skokie, IL
158. South Bristol, NY
159. South Euclid, OH
160. Spectradyne
161. Stevens, Sen. Ted
162. Troy, MI
163. Tucsan, AR
164. Tuscaloosa, AL
165. Tustin, CA
166. United States Sat. Broadcasting Co., Inc.
167. Upland, CA
168. Warren, MI
169. Warwick, RI
170. Wauwotosa, MN
171. West Carrollton
172. West Goshen, PA
173. West Michigan Reg. Planning Comm.
174. Western New York Planners Assoc.
175. Westminster, CO
176. Woodbury, MN
177. Yedenach, Stephen J.
178. Yountville, CA

PART 25—[AMENDED]

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 25) is amended as follows:

1. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.531 issued under sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 54. Interpret or apply Secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744.

2. By adding new § 25.104 as follows:

§ 25.104 Preemption of local zoning of earth stations.

State and local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations:

(a) Have a reasonable and clearly defined health, safety or aesthetic objective; and

(b) Do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or to impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment.

Regulation of satellite transmitting antennas is preempted in the same manner except that state and local health and safety regulation is not preempted.

Statement of Commissioner Mimi Weyforth Dawson Dissenting in Part

Re: Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations. CC Docket 85–87:

If this decision were consistent with the press reports of it, I might be inclined to support it.[1] Unfortunately, since I cannot support the Commission's blessing of either blanket bans against all communications antennas or local ordinances which allow discrimination *in effect* against satellite antennas [TVROs], I must dissent in part.

A careful reading of the rule adopted by this decision reveals just how narrow the Commission's preemption is. The rule adopted by the majority essentially divides local ordinances into two categories: (1) Those local ordinances which "differentiate between . . . [TVRO] antennas and other types of antenna facilities" [2]; and (2) those

[1] For example, the Associated Press reported that "[t]he only way local zoning authorities can ban the use of backyard or rooftop satellite TV receiving dishes is by showing they violate a 'reasonable and clearly defined health, safety or aesthetic' consideration". As shown above, this is clearly incorrect. Similarly, it is incorrect to say, as reported by the *New York Times*, that in order to be valid "zoning regulations limiting homeowners' right to install [TVRO] antennas 'must have a reasonable and clearly defined' health, safety or a esthetic objective."

[2] even those ordinances which *do* discriminate are not necessarily prohibited. The rule allows discriminatory ordinances as long as they "have a reasonable and clearly defined health, safety or aesthetic objective" and do not "impose unreasonable limitations on, or prevent" TVROs or impose "excessive costs" or TVROs.

which do not "differentiate". This latter group falls entirely outside the majority's rule and, thus, is not preempted or otherwise affected by the rule.

However, this dichotomy creates—and seems intended to create—an enormous loophole which I cannot support. First, since blanket bans against *all* antennas (or blanket bans which grandfather existing antennas) do not "differentiate" among types of antennas, they are entirely permissible under the majority's rule. And this ability to ban all antennas rests with the local authority whether or not the ban involves some nationally registered historic district since the majority's rule simply suggests no different treatment for historic districts.

Moreover, the majority's reading of "differentiate" allows numerous rules which *have the effect* of discriminating against TVROs. For example, the majority seems to include within the definition of "differentiate" only those ordinances which separate TVROs by name or those which identify some "shape" characteristic unique to TVROs (as an ordinance which prohibits spherical antennas). Other ordinances—even if they have the *effect* of discriminating against TVROs—do not come within the ambit of the majority's rule and, thus, are not preempted by the Commission.

Such ordinances are not difficult to imagine. For example, a city ordinance might prohibit all antennas over eight feet tall or might prohibit all antennas which are more than 20 feet high and more than three feet wide. Neither ordinance, in the majority's view, would "differentiate" between TVROs and other antennas because neither would single out TVROs by name or "shape". But each would have the *effect* of prohibiting satellite antennas.

I cannot support such a local blanket veto power over interstate communications. In 1984 Congress amended the Communications Act to recognize the legal right (with certain enumerated exceptions) of individuals to intercept and receive "any satellite cable programming for private viewing". 47 U.S.C. Sec. 705. By allowing localities to prohibit satellite antennas as part of a blanket ban or as the effect of some "non-discriminatory" ordinance, I think we do great damage to that Congressional goal.

In addition, this decision is wholly inconsistent with the Commission's recently announced policy with regard to SMATV and amateur antennas. In its SMATV decision, the Commission explicitly stated that local regulation could not "inhibit or interfere with the delivery of interstate [SMATV] signals" and that local regulation could not discriminate *in fact* or be "undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective". *Earth Satellite Communications, Inc.*, 95 F.C.C. 2d 1223 (1983).[3]

Likewise, in its amateur antenna decision, the Commission clearly and unequivocally said that "[s]tate and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted." *Federal Preemption of State and Local Regulations.* And the Commission stated that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." *Id.* It is difficult to square these policies with a TVRO rule which allows localities to prohibit satellite antennas.

Finally, I simply cannot understand this decision in its attempt to reconcile these various pronouncements by stating the objective "to ensure that satellite receiving antennas are not treated less favorably than other antenna devices such as Satellite Master Antenna Systems (SMATVs) and Amateur Radio antennas." *Decision* at para. 33 (footnote omitted). How can this be the case if on the one hand localities are prohibited from banning amateur and SMATV antennas but may ban TVROs (and broadcast antennas for that matter)?

I would be less concerned about this had the discussion at the Commission meeting produced a consistent, well-reasoned explanation for these obvious conflicts. But what I fear that we have done is leave the area hopelessly confused. Indeed, I am unable to read this language and discover whether the Commission intended to conform the TVRO decision to its previous decisions or, as seems more likely, to conform its previous decisions to the TVRO decision—without the requisite record or notice for doing so.

While I am sympathetic to localities' traditional role in use planning,[4] this is not a purely local issue. It involves the right of individuals, as guaranteed by the First Amendment and the Communications Act, to receive interstate communications. As Senator Goldwater said in introducing S.R. 35,

> as a political conservative, I believe that each State possesses broad authority and responsibility on a wide range of subjects. However, the basic question here is not Federal preemption of local powers. It is whether cities and counties can thwart a clear national policy which has been repeatedly enunciated by the Congress and the FCC to encourage the development of new communications technologies and services in the public interest.
>
> 131 Cong. Rec. 5357 (January 3, 1985, statement of Sen. Goldwater).

Accordingly, insofar as the majority's decision allows localities to ban all antennas or to discriminate against TVROs in effect, I dissent.

[FR Doc. 86-3258 Filed 12-13-86; 8:45 am]
BILLING CODE 6712-01-M

[3] On reconsideration the Commission declined to go further and preempt all local zoning regulation by noting that that "is not appropriate for discussion here" and that the "scope of the initial proceeding did not include review of this issue." Slip Op. at para. 6.

[4] Requiring a TVRO to be securely fastened or requiring that it be as unobtrusive as practicable would, as far as I am concerned, be reasonable local regulation and would comport with states' traditional police power. However, I cannot agree that this power to regulate includes the power to prohibit. In addition, it seems possible that, to accommodate the competing federal policies of fostering interstate communications and preserving historic areas, the Commission could adopt a liberal waiver policy or even an exemption for areas covered by the national Historic Preservation Act. 16 U.S.C. Secs. 470, *et seq.*

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47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286; FCC 86-6]

MTS and WATS Market Structure; Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rule (Decision and Order); correction.

SUMMARY: On January 21, 1986, the Commission published a Decision and Order in this proceeding concerning MTS and WATS Market Structure (FR Doc. 86-682, 51 FR 2708). Through inadvertence, the wrong Preamble was associated with that item. The Preamble which appeared is to be associated with another action in this proceeding yet to be published. The correct Preamble, concerning the separations treatment of equal access and network reconfigurations costs, is included here.

FOR FURTHER INFORMATION CONTACT: David Siddall, Common Carrier Bureau, Washington, D.C. 20554, (202) 632-0745.

William J. Tricarico,

Secretary, Federal Communications Commission.

AGENCY: Federal Communications Commission.

ACTION: Decision and Order.

SUMMARY: The Federal Communications Commission adopts the Federal-State Joint Board's recommendations concerning the separations treatment of equal access and network reconfiguration costs. The Commission adopted the separations procedures recommended by the Joint Board because they will produce a cost based allocation of these costs between the jurisdictions. Implementation of separations procedures which reflect cost causation principles will promote efficient use of the telephone network.

EFFECTIVE DATE: February 20, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Siddall, Common Carrier Bureau, Washington, D.C. 20554, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 67

Jurisdictional separations, Telephone.

[FR Doc. 86-3259 Filed 2-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-179; RM-4870]

TV Broadcast Station in Fredericksburg, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Steven D. King, assigns VHF Television Channel 2 to Fredericksburg, Texas, as that community's first television service. In addition, offset changes are made for Channel 2 at both Amarillo and Midland, Texas.

EFFECTIVE DATE: March 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pat Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Fredericksburg, Texas) MM Docket No. 85-179, RM-4870.

Adopted: January 24, 1986.
Released: February 7, 1986.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 50 FR 26008, published June 24, 1985, proposing the assignment of VHF Television Channel 2 to Fredericksburg, Texas, as that community's first commercial television assignment, at the request of Steven D. King ("petitioner"). In order to accomplish the assignment, the licensee of Station KMID-TV, Channel 2, Midland, Texas, was requested to show cause why its license should not be modified to specify change in offset from "plus" to "minus." Further, the offset for unused but applied-for Channel *2, Amarillo, Texas [1], must be changed from "minus" to "plus." Supporting comments were filed by petitioner reaffirming his intention to apply for the channel. No other comments were received.

2. Fredericksburg (population 6,412) [2], seat of Gillespie County (population 13,532) is located in central Texas, approximately 120 kilometers (75 miles) west of Austin, Texas.

3. The assignment can be made in compliance with the minimum distance separation and other technical requirements provided offset changes are made as indicated above. Since Fredericksburg and Midland, Texas, are within 400 kilometers (250 miles) of the U.S.-Mexican border, concurrence from the Mexican government has been obtained.

4. As stated in the *Notice*, the ultimate permittee of Channel 2, Fredericksburg, Texas, will be required to reimburse the licensee of Station KMID-TV, Channel 2, Midland, Texas, for reasonable expenses incurred as a result of the change in offset. The petitioner agrees to reimburse Station KMID-TV for reasonable expenses incurred in changing its offset if selected as the ultimate permittee of Channel 2 at Fredericksburg.

PART 73—[AMENDED]

5. We believe the public interest will be served by the assignment of Channel 2 to Fredericksburg. Accordingly, pursuant to authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 17, 1986, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the communities listed below, as follows:

City	Channel No.
Amarillo, Texas	*2+, 4, 7, 10, 14+
Fredericksburg, Texas	2+
Midland, Texas	2-, 18

6. It is further ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Telepictures Broadcasting Corporation for Station KMID-TV, Midland, Texas, is modified to specify operation on Channel 2- in lieu of Channel 2+ subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the

[1] The applicants for Channel *2, Amarillo, Texas, are: Family Media, Inc. (BPET-831017KH); and Amarillo Junior College District (BPET-831219KM).

[2] Population figures are extracted from the 1980 U.S. Census.

necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. Family Media, Inc., and Amarillo Junior College District will be permitted to amend their applications to reflect the change in offset from "minus" to "plus" for Channel *2 at Amarillo, Texas, without their filing status affected.

8. It is further ordered, that the Secretary of the Commission shall send a copy of this Order by Certified Mail, return receipt requested, to Family Media, Inc., 1700 Duncan, Pampa, Texas 79065 and Amarillo Junior College District, P.O. Box 447, Amarillo, Texas 79178, the applicants for Channel 2 at Amarillo, Texas.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–3260 Filed 2–13–86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 31
Friday, February 14, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California; Reapportionment of Valencia Orange Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed action would reapportion the membership on the Valencia Orange Administrative Committee to assure equitable representation among the different marketing organizations in the industry.

DATE: Comments due: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447–5053.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

This action would increase the number of members on the Valencia Orange Administrative Committee representing "other cooperatives" from two to three and decrease the number of members representing independents from three to two. Such allocation of representation reflects the proportional amount of Valencia oranges handled by the respective types of marketing organizations.

It is estimated that approximately 104 handlers of California-Arizona Valencia oranges will be subject to regulation under the marketing order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This rule is issued under Marketing Order 908, as amended (7 CFR Part 908, 50 FR 1429, 34076), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as "the act". It is hereby found that this proposed rule will tend to effectuate the declared policy of the act.

On January 14, 1986, the Valencia Orange Administrative Committee (VOAC), which administers the marketing order locally, voted to recommend to the Department that membership on the committee be reallocated to more accurately reflect the quantity of oranges handled by the various marketing organizations eligible for membership on the committee. The committee recommended that the number of members in the other cooperative category of membership be increased by one grower member and that the members in the independent or unaffiliated category of membership be decreased by one grower member. Presently, there are two other cooperative member positions (one grower and one handler and their respective alternates) and three independent positions (two growers and one handler and their respective alternates).

The committee's recommendation is in line with § 908.29(n) of the marketing order which states that the committee may, with the approval of the Secretary, "reapportion the number of grower members or handler members on the Valencia Orange Administrative Committee who are nominated pursuant to §§ 908.22 (c) and (d). Any such changes shall be based, insofar as practicable, upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations, provided that each of the grower groups described in §§ 908.22 (c) and (d) shall be entitled to nominate at least one grower and one handler member together with their respective alternates." As of December 26, 1985, other cooperative marketing organizations handled 20.34 percent (4,848,070 cartons) of the Valencia oranges shipped to fresh domestic markets while independents handled 13.98 percent (3,332,700 cartons).

Comments on this proposal will be accepted until March 3, 1986. A 15-day comment period is considered adequate because: (1) The current term of office for committee members expired on January 31, 1986; (2) a new committee should be appointed prior to the completion of deliberations on the marketing policy for the 1985–86 Valencia orange season; (3) there are currently nine vacancies (including alternates and additional alternates) in the other cooperative and independent categories of membership due to the new selection criteria for members (50 FR 50759) which became effective on January 13, 1986; and (4) no useful

purpose would be served by delaying the effective date of this rule.

List of Subjects in 7 CFR Part 908

Marketing Agreements, California, Arizona, oranges (Valencia).

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Paragraphs (a) (2) and (3) of § 908.102 would be revised to read as follows:

§ 908.102 Nomination procedure.

(a) * * *

(2) All cooperative marketing organizations which are not qualified to nominate members and alternate members pursuant to § 908.22(b), or the growers affiliated therewith, shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member of the committee. The vote of each such organization shall be weighted, as provided in § 908.22(e), by the quantity of oranges which it handled during the marketing year in which the nominations are made.

(3) Not less than five meetings shall be held at such times and places throughout the production area as may be designated by the agent of the Secretary, at which growers who are not members of, or affiliated with, the organizations included under paragraphs (a) (1) and (2) of this section may vote. At each such meetings, the growers present shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member. The number of ballots to be cast in selecting the nominees at any such meeting shall be determined at that meeting. All growers voting at any such meeting shall submit their names and addresses to the agent of the Secretary.

* * * * *

Dated: February 10, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-3267 Filed 2-13-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1124

[Docket No. AO-368-A14]

Milk in the Oregon-Washington Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the Oregon-Washington milk order that will enable handlers to pool producer milk that is surplus to the fluid (bottling) needs of the market without costly, inefficient and unnecessary handling and hauling of the milk. The changes would reduce the amount of milk that supply plants must deliver to pool distributing plants in order to meet pool performance standards, eliminate some of the deliveries of individual producers' milk that are required to be made to pool plants if the remainder of the producers' milk is to be eligible to be diverted to nonpool plants, and increase the amount of a handler's supply of milk not needed for fluid use that may be moved from producers' farms directly to nonpool plants for manufacturing use.

Other amendments would cause the fluid equivalent of nonfluid milk receipts used in Class II products to be allocated to Class II use instead of to Class III, and would provide that nonmember producers who are not paid under the Oregon State Quota plan may be paid directly by their handler rather than by the market administrator.

The order amendments, which are based on industry proposals considered at a public hearing held in July 1985, are necessary to reflect current marketing conditions and to assure orderly marketing in the Oregon-Washington marketing area.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Argiculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by regulated handlers and will tend to ensure the use of efficient milk marketing practices.

Prior Documents in this Proceeding

Notice of Hearing: Issued July 3, 1985; published July 9, 1985 (50 FR 27972).

Recommended Decision: Issued November 20, 1985; published November 27, 1985 (50 FR 48776)

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Oregon-Washington marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Portland, Oregon, on July 24, 1985. Notice of such hearing was issued on July 3, 1985, and published July 9, 1985 (50 FR 27972).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on November 20, 1985, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Two new paragraphs are added at the end of Issue 2.

2. The last (tenth) paragraph under Issue 3 has been revised, and a new paragraph has been added at the end of Issue 3.

The material issues on the record of hearing relate to:

1. Pool supply plant performance standards.

2. Producer delivery requirements.

3. Diversion limits.

4. Allocation of nonfluid milk receipts used in Class II products.

5. Payments to producers.

6. Producer base percentage.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool Supply Plant Performance Standards

The percentage of a supply plant's receipts that must be shipped to pool distributing plants in order for the

supply plant to be pooled should be decreased to 40 percent in the months of September, October and November, and 30 percent in all other months. Supply plant pooling standards are currently 50 percent in the months of October through December; 40 percent in September, January and February; and 30 percent in the months of March through August.

Oregon Milk Marketing Federation (OMMF), a federation of three cooperative associations that historically have supplied milk to the Oregon-Washington market, proposed that the percentage of producer milk receipts that supply plants must provide to pool distributing plants in order to qualify as pool supply plants be reduced. The association members of the federation are Farmers Cooperative Creamery (Farmers), Oregon Jersey Cooperative (Oregon Jersey), the Tillamook County Creamery Association (Tillamook). Oregon Milk Marketing Federation markets the milk of 347 Grade A producers, or slightly over one-third of the producers pooled under the order at the time of the hearing. Farmers owns and operates a nonpool manufacturing plant at McMinnville, Oregon, which handles reserve supplies for the Federation and for the market. The milk of Farmers' producers, located throughout the marketing area, is pooled on the basis of direct deliveries to pool distributing plants. The milk of Oregon Jersey members is received primarily at pool distributing plants and at nonpool cheese plants. Tillamook operates a large nonpool cheese manufacturing plant, a small fluid processing operation and, since 1983, a pool supply plant, all at the same location in Tillamook, Oregon.

The manager of the Federation testified that the supply plant operated by Tillamook is one of two supply plants pooled under the Oregon-Washington order. He stated that during the first five months of 1985, the Tillamook supply plant would not have met the order's present pooling standards if Tillamook had found it necessary to qualify all of its member producer milk supply for pooling through its supply plant. Tillamook's entire producer milk supply did not have to be pooled through the Tillamook supply plant during that period because a letter requesting that allowable diversions be computed on the basis of the cooperatives' combined producer deliveries had been filed with the market administrator by Tillamook, Farmers and Northwest Dairymen's Association (NDA). The letter was terminated June 1, 1985. In the absence of such a combining request, the witness stated, Tillamook would not be able to pool its entire supply of producer milk through its supply plant by shipping milk to distributing plants in Portland unless the percentages of milk required by the pool plant definition to be moved to pool distributing plants are reduced. The witness introduced data indicating that the percentage required to be delivered to pool distributing plants would have had to be approximately 10 percentage points lower in January and February of 1985 if Tillamook's entire milk supply were to be eligible for pooling on the basis of its supply plant operations. He testified that Tillamook could operate within the present percentages only by moving milk received at the supply plant to Portland-area distributing plants, unloading it into the distributing plants, then reloading the milk back into the same trucks and hauling it back to the Tillamook nonpool cheese manufacturing plant. Such an operation was described by the witness as unnecessarily burdensome and expensive, and potentially harmful to the quality of the milk handled.

The OMMF witness described the three cooperatives comprising the Federation as playing an historically important role in supplying the fluid needs of the market and in providing outlets for the reserve supplies of many of the market's handlers. He explained that the recent trends of production accelerating more rapidly than fluid demand, nationally as well as in the Northwest U.S., and the growth of nonmember numbers and production in the Oregon-Washington market have resulted in the displacement of OMMF producer milk from distributing plants at which the cooperatives' milk was required in past years. The witness stated that because of these trends, the percentage of OMMF milk required by fluid handlers is declining at a rate greater than the decline in the marketwide percentage of producer milk used in Class I.

Statistics introduced by the witness show production increases of OMMF members of nine percent for the first six months of 1985 over the same period in 1984. While OMMF production and Oregon-Washington production in general have been increasing, production by nonmember producers has increased at the still-higher rate of 11.1 percent from January–June 1984 to January–June 1985. The witness testified that as a rule nonmember milk in the Oregon-Washington market is used primarily in fluid milk, supplemented when necessary by reserve supplies from cooperative sources. Consequently, he stated, increases in nonmember supplies cause lesser amounts of cooperative member milk to be required by distributing plants, especially during times of flush production and low fluid consumption. According to the witness, OMMF's problem in continuing to secure a large enough percentage of the market's fluid sales to assure that all of its members' milk will be able to participate in the marketwide pool is further exacerbated by the fact that NDA, another large cooperative association operating in the marketing area owns and operates three Darigold pool distributing plants that together account for a larger volume of Class I sales than any other distributing plant operator in the market. NDA production has increased at a rate similar to the production increases in the market as a whole, a trend that has resulted in less of OMMF's supply of milk to be required by the Darigold plants. The milk produced by OMMF cooperative members, therefore, currently is being displaced from its historical fluid outlets by increased nonmember production and from the NDA-owned Darigold plants by NDA production, which also is rising significantly.

The increasing difficulty involved in finding sufficient fluid outlets for OMMF milk to assure its pool status is the principal problem confronting Tillamook in qualifying its supply plant for pooling. It is clear from the testimony and exhibits presented that in some months Tillamook is not able to qualify all of its producer milk for pooling through its supply plant under the order's present supply plant shipping standards, and that increasing milk production in the market by both OMMF members, nonmember producers and NDA members will make the cooperative less able to qualify its supply plant for pooling. Therefore, it is appropriate at this time to reduce the delivery requirement for supply plants to reflect more nearly the prevailing market conditions. The percentage should be reduced to the levels requested by OMMF, as those are the standards within which the Tillamook plant is expected to be able to operate. A requirement that 40 percent of a supply plant's receipts be delivered to pool distributing plants during September, October and November, the months during which Class I utilization is at its peak, and 30 percent in other months, will assure that the plant will continue to have a close association with the fluid market without requiring the cooperative to engage in inefficient and uneconomic hauling practices solely for the purpose of pooling its milk.

Retention of the provision currently in the order that allows automatic pooling status for a supply plant during the months of March through August if it has qualified as a pool plant during the previous September through February period will help to ensure that unnecessary hauling costs will not be incurred during the market's months of high production relative to demand solely to keep the cooperative's member milk pooled.

2. Producer Delivery Requirements

The present order requirements that a new producer's milk be delivered to a pool plant at least once during each of the two months following the original shipment and that every producer's milk be delivered at least once to a pool plant during each month of September, October and November in order for the producer's milk to be eligible for unlimited diversion to nonpool plants during the remainder of the year should be eliminated. In addition, the requirement that for a producer's milk to be pooled, its first Grade A delivery must be received at a pool plant should be changed to require only that at least one delivery during the producer's first month on the market is received at a pool plant.

Oregon Milk Marketing Federation proposed that the yearly "touch-base" requirement during the months of September through November be eliminated. Darigold, on behalf of Northwest Dairymen's Association, concurred with the OMMF proposal and extended it to include the two months following a producer's initial shipment to a pool plant.

The OMMF manager and the assistant manager of Tillamook testified in favor of their proposal to eliminate the annual requirement that each producer's milk be received at a pool plant at least once during each of the months of September, October and November. The OMMF manager explained that the provision has proven to be greatly inefficient and a sometimes costly problem for member producers and cooperatives in the market, and probably for some nonmember producers and proprietary handlers as well. The witness described the impact of the requirement on members of all three of the cooperatives comprising OMMF as causing shipments of milk to be made from areas of production near nonpool plants to pool plants 100 or more miles away solely to meet the order requirement. He stated that such shipments to pool plants displace the normal sources of milk for those plants, requiring the handlers to move their regular milk supplies to other outlets. Thus, he claimed, the provision requires unnecessary and uneconomic movements of milk and disrupts local procurement routes to assure that each producer's milk is delivered to a pool plant.

The witness stated that the annual "touch-base" requirement is the source of numerous audit billings to handlers from the market administrator to reimburse the pool for milk disqualified for pooling because of failure to get some producers' milk into pool plants during each of the three consecutive months. Such failure, he said, most often results from clerical or hauler errors in dealing with degraded milk and producers shifting between routes. He also explained that in some cases failure to qualify producers in each of the three months has resulted in those producers failing to earn a daily Federal order base and thus not participating equitably in the marketwide base milk pool for a year.

The witness expressed the belief that producers established on the market should not have to qualify annually thereafter, and that the percentage limits on a handler's allowable diversions assure that the handler's milk supply is meeting the pooling standards on a collective basis. He stated that if the cooperative meets its overall performance standards for supplying milk to the market, it should make no significant difference which individual producer's milk is actually delivered to pool plants as long as the milk of each producer participating in the marketwide pool qualifies for Grade A status and is available to the market if and when needed.

The witness stated further that he could see no potential problem for distributing plants in obtaining needed milk supplies as a result of elimination of the annual "touch-base" requirement. He testified that retaining the requirement that each new producer's milk be received at pool plants at least once during each of its first three months on the market would give producers an awareness of their obligation to the Class I market. Under cross-examination, however, he indicated that individual dairy farmers very likely do not understand the order's qualification requirements for pooling. The witness also testified that he had no disagreement with elimination of the requirement that a new producer's first Grade A delivery be to a pool plant as long as at least one delivery in the producer's first month of Grade A production is to a pool plant.

The Tillamook representative testified that elimination of the annual "touch-base" requirement would simplify the procedure of qualifying producers for pooling and for unlimited diversion to nonpool plants, and significantly reduce the costs of extra hauling for the purpose of assuring that each producer's milk is delivered to a pool plant during each month of September, October and November. The witness stated that to date no Tillamook producers had failed to meet the individual producer delivery requirements, but that such a lapse would be inevitable at some point through oversight or error in the hauling or accounting procedures. The Tillamook witness also testified to the need for elimination of the requirement that a producer's first Grade A delivery must be to a pool plant if any of the producer's milk is to be eligible for pooling in that month.

A witness for Darigold testified in favor of eliminating not only the annual "touch-base" requirement, but the requirement that a producer's milk be received at a pool plant at least once in each of the two months immediately following the month in which it is first pooled. He also urged that a new producer be required to deliver milk to a pool plant during his first month of association with the market rather than on his first day of such association. The witness stated that at the time the order was promulgated, there may have been a need to ensure that the milk of each producer in the market be received regularly at pool plants so that their milk would be available when needed. He pointed out that since the early 1970's, however, the Class I utilization percentage of the market has declined from over 70 percent to less than 50 percent at the present time. In view of the fact that current production increases are significantly greater than the growth in Class I sales, the witness predicted that the Class I use percentage will continue to decline. Over the same period of time, he observed, the number of bottling plants has decreased greatly and the number of organizations controlling the milk supply has declined. Because of the combination of a centralization of control and a decrease in the percentage of Class I sales, the witness stated, there have been no problems in securing an adequate amount of milk for Class I needs, and the "touch-base" requirements are no longer necessary. He testified that the milk of producers located close to manufacturing plants should be allowed to be delivered to those plants, and be moved to Class I outlets only when it is really needed there. He stated that it is more efficient and economical to deliver producer milk to nearby plants, and that there are adequate milk supplies to fill

fluid needs located close-in to fluid processing plants. Therefore, the witness concluded, it is neither desirable nor economical to move milk from areas close to nonpool manufacturing plants to bottling plants in the city markets when that milk is not needed in those plants.

In regard to eliminating the delivery requirement for the two months immediately following a producer's first delivery, the Darigold witness pointed out that those months may fall during the flush months of production when milk supplies are most surplus to the needs of the market. He stated that one delivery to a pool plant during a producer's first month on the market should be sufficient to demonstrate that the producer's milk is available for fluid use when and if needed. The witness testified that it should not be necessary to reroute a truck to a distant pool plant on the day a new producer enters the market, or during the two months immediately following the producer's entry. For the purpose of delivering milk in the most efficient manner possible and at the least expense to dairy farmers, the witness expressed Darigold's belief that a new producer's initial delivery to a pool plant should be some time within the first month in which the producer becomes associated with the market, so that the handler has some flexibility in scheduling the delivery of the milk. He testified that milk delivered by a handler from a dairy farm to a nonpool plant after issuance of a farm health permit but before any delivery to a pool plant should be considered producer milk during the month.

As a conforming change to relaxation of the "touch-base" provisions of the order, the Darigold witness also suggested that the "Dairy farmer for other markets" provision should be changed to allow Grade A milk delivered to nonpool plants before any of the producer's production is received at a pool plant to be considered a diversion of pooled producer milk. He stated that the current language of the provision would require the producer's milk for the whole month to be considered nonpool, with the portion received at a pool plant considered a receipt from a "dairy farmer for other markets."

The office manager for Northwest Dairymen's Association testified about the specific administrative problems and hauling inefficiencies caused by the present order provisions. He stated that during the qualifying months of September, October and November, NDA must move 30 to 35 loads of milk on special trips to pool plants to "touch base" for the producers involved. After the milk arrives at pool plants, the witness said, it then must be reloaded and shipped to nonpool plants where it can be used. He specified the cost of such special hauling arrangements as over $10,000 per month, costs which are in turn distributed back to the cooperative's member producers.

In addition to the annual delivery requirements, the witness stated that the deliveries to pool plants required during each new producer's second and third months of production on the market also cause handlers to incur additional hauling costs and inefficiencies. He described the difficulties of assuring that all producer milk is picked up and processed, especially during the months of flush production when processing plants are filled to capacity, and trying to reroute tankers to qualify new producers at the same time.

The NDA representative described the present order requirement that a producer's first delivery of Grade A milk be to a pool plant as very difficult to administer and offered several illustrations. He explained that the consequence of failing to meet the requirement is that none of the producer's milk would be eligible for pooling for the producer's entire first month of Grade A production, a status that would continue until the producer's first delivery for a month is received at a pool plant. He stated that problems of coordination with the Oregon State Department of Agriculture, which issues Grade A permits, can cause the cooperative to miss delivering a producer's first Grade A production to a pool plant when the permit is backdated by the health authority, or to arrange for a producer's milk to be delivered to a pool plant where it then fails to meet the State's Grade A standards. The witness described the complexity of scheduling milk into pool plants solely for qualifying it for diversion while trying to coordinate the pick-up and delivery of producer milk to pool and nonpool plants by Darigold's fleet of trucks and a number of contract haulers. He explained that some producers' first deliveries must be made on weekends when some pool plants are not receiving milk. In that case, he said, the milk must be delivered to alternative plants, displacing their usual supplies of producer milk to still other plants. The extra milk movements involved in such coordination were described by the witness as costly and inefficient.

In view of the expensive, inefficient and unnecessary movements of milk undertaken by handlers to assure that the milk of all of their producers will be eligible to be included in the marketwide pool, the provisions of the order that require each producer's milk to be received at least once at a pool plant during each of the months of September, October and November and during the producer's second and third months on the market should be eliminated. The requirement that a producer's first Grade A delivery must be received at a pool plant in order for any of the producer's milk to be pooled in that month also should be removed. To the extent the "Dairy farmer for other markets" definition does not allow Grade A milk diverted to nonpool plants to be considered producer milk before a producer's milk is delivered to a pool plant, that provision should be changed. However, all of a producer's Grade A production for a given month should be pooled under this or another Federal order if any of it is to be pooled.

Elimination of the second- and third-month and annual "touch-base" requirements should have no effect on the ability of fluid milk outlets to attract the supplies of milk necessary to satisfy consumer demand. In combination with the increasing volume of Grade A production compared with the amount needed for Class I use in the Oregon-Washington market, the milk of nonmembers that is regularly received at pool distributing plants and the supply of NDA milk that is associated with the Darigold plants, the order's diversion limits and supply plant shipping standards should assure that pool distributing plants will experience no difficulty in obtaining adequate supplies of milk.

Also, requiring handlers to cause a producer's first Grade A delivery to be received at a pool plant if any of such producer's Grade A production for the month is to be pooled is an unnecessary standard in this market. Before any of a producer's milk is pooled, it should be demonstrated that the handler of the milk has the ability and is willing to deliver the milk to a pool plant. However, the pooling process takes place after the end of the month in which milk is produced and delivered. Therefore, the order should provide that a producer's qualifying delivery to a pool plant may be made at any time during the producer's first month on the market.

An exception to the recommended decision filed by Darigold pointed out that the language of the "Dairy farmer for other markets" definition contained in the recommended decision would result in a dairy farmer having such status if the dairy farmer, rather than the

handler of his milk, were responsible for movement of milk to a nonpool plant as other than a diversion. Darigold expressed concern that the handler might find out only at a later date that the producer had delivered some milk to a nonpool plant, and might be caused some unexpected difficulties as a result. The cooperative did not specify precisely what unexpected difficulties might be encountered, but suggested that language be added to the provision that would result in "Dairy farmer for other markets" status only if the delivery of Grade A milk to a nonpool plant was directed by the handler operating the pool plant at which the dairy farmer's milk was previously received.

It is difficult to foresee what difficulties the proposed order language might cause for a handler whose producer delivers Grade A milk to a nonpool plant as other than a diversion by the handler. If such a transaction were discovered at a later time, of course, the producer's milk would be depooled as a result of an audit. Depooling producer milk as a result of an audit of a handler's records, however, is not an uncommon or onerous occurrence. The intent of the "Dairy farmer for other markets" provision is that all of a producer's Grade A milk production be pooled if any of it is to be eligible for pooling. The language of the definition contained in the recommended decision fulfills that intent more completely than the alternative language suggested by Darigold. Therefore, the language should not be changed from that included in the recommended decision.

3. Diversion Limits

The limit on the percentage of a handler's total milk supply that may be diverted to nonpool plants should be relaxed as proposed by the Oregon Milk Marketing Federation. The change would increase the present 60-percent diversion limit in all months to a limit of 70 percent in the months of September through November, January and February; and 80 percent in the months of December, March and April. No diversion limit should apply during the months of May through August. A proposal by Darigold to increase diversion limits to 80 percent during the months of September through April with no limits in other months should not be adopted.

The OMMF manager testified about the difficulties of assuring that all of the milk of OMMF members would be able to continue participation in the marketwide pool while operating within the order's present diversion limits. He explained that the demand by pool distributing plants for milk from the OMMF cooperatives has declined as milk production in the market has increased. He attributed the loss of the OMMF cooperatives' fluid market to the disproportionate growth in the number of nonmember producers and their production and the role played by NDA's producers in supplying their Darigold plants. The witness stated that as milk production increases seasonally, more of the market's Class I use is absorbed by nonmember producers whose milk is shipped to proprietary distributing plants, and by NDA members supplying Darigold plants. Consequently, less of the OMMF milk is needed for use at fluid processing plants when milk production is at its peak. If handled most economically, milk produced in excess of fluid needs must be diverted to manufacturing uses. Milk surplus to the needs of the fluid market could be received first at pool plants, the witness said, then reloaded and shipped to nonpool plants where it could be used. Such extra handling and hauling would enable a cooperative to qualify all of its milk supply for pooling within the order's diversion limits. However, he characterized such movements as costly and uneconomical, and detrimental to milk quality.

The witness stressed the importance of assuring that all of the OMMF milk continue to be subject to the order's marketwide pooling and pricing provisions. He stated that a large volume of Grade A milk, eligible and available for fluid use but eliminated from the pool by failure to meet diversion limits, would create a very disruptive influence in the marketing area. Such a situation, he predicted, would result in the unpooled producers searching competitively for a fluid outlet for their milk to regain pool status and be able to share in the pool. He referred to the sort of potentially disruptive situation that might result from depooling large amounts of producer milk as one of the factors that necessitated the creation of Federal milk marketing orders.

The OMMF manager also emphasized the importance of retaining OMMF milk supplies in the pool as a necessary reserve for serving the supplemental needs of the market. He described the needs of distributing plants for milk supplies as fluctuating according to the day of the week, with less milk being required on weekend days, and greater volumes on weekdays. He explained that because of the supplemental function served by OMMF's milk supplies, the effect of distributing plant's daily fluctuation in demand has a disproportionate effect on the daily volume of OMMF milk required by distributing plants.

The witness submitted an exhibit that showed the daily variability of OMMF movements of milk to pool plants during the months of January and June 1985. January is generally a month of seasonally low production and relatively high Class I use. In June, Class I use is generally at its lowest level in relation to milk production, which is at or near its seasonal peak. The exhibit showed that in January 1985, OMMF's largest daily volume of sales to pool plants was more than three times the amount of OMMF milk required at pool plants on the lowest-volume weekend day. The amount of milk delivered to fluid processing plants on the higest-volume day in January represented approximately 60 percent of OMMF's average daily production for the month. During the month of January in total, however, only 43 percent of OMMF's milk was received at pool plants, with the remaining 57 diverted to nonpool plants.

For the month of June 1985, the largest volume of OMMF milk moved to pool plants on any day was more than twice the smallest daily volume, and was approximately 40 percent of the average daily supply of OMMF milk during June. However, during the whole month of June, only 27 percent of OMMF's milk supplies were delivered to pool plants, with 73 percent diverted to nonpool plants. It is apparent from these statistics that OMMF producers play a significant role in handling the necessary reserve milk supplies of the market. At the same time, it is also evident that OMMF cannot handle its entire milk supply in the most efficient and economic manner without an increase in the order's present diversion limits.

A witness representing Darigold, Inc., testified in favor of Darigold's proposal to increase the Oregon-Washington order's diversion limits from 60 percent in each month to 80 percent during the months of September through April, with no limit effective for the months of March through August. The witness characterized the current limits as too restrictive in view of the large volume of milk in the market relative to the use of milk in Class I products, and the absence of alternative markets. He stated that Northwest Dairymen's Association has experienced no difficulty in meeting the current 60-percent limit on diversions, and had assisted other cooperatives in qualifying their milk supplies by joining them in

requesting that the deliveries of NDA's and the other cooperatives' milk be combined for the purpose of determining allowable diversions. The Darigold witness predicted that other cooperatives in the market might experience difficulties within the near future in meeting the 60-percent diversion limit, since milk production is over the level of the previous year. He stated that even Darigold may have trouble operating within the present diversion limit without engaging in artificial and uneconomic interplant movements of milk if milk production continues to increase at present rates.

The Darigold representative recommended that the diversion limits be increased to 80 percent for the months of September through April with no limit during the May through August period on the basis that such diversion limits would be similar to provisions of the neighboring Puget Sound-Inland order which, he said, permit the efficient handling and routing of producer milk. He stated that there have been no problems in that market in securing adequate supplies of milk for Class I use, despite the higher diversion limits there.

The Darigold witness presented no statistical evidence that would indicate that diversion limits should be increased by 20 percentage points. His testimony that NDA has had no difficulty in operating within the present 60-percent limit and, indeed, has been able through combination of deliveries to assist other cooperatives in assuring that their milk supplies will be eligible for pooling indicates that the limits adopted herein would be adequate to assure that NDA will continue to be able to pool its member producer milk supply on the Oregon-Washington market without resorting to inefficient and uneconomical movements of milk. The assertion that diversion percentages in the Oregon-Washington milk order should be the same as those in Puget Sound-Inland is not persuasive. The two markets historically have different Class I use percentages, with the Oregon-Washington Class I percentage approximately 10 points higher than the same statistic for Puget Sound-Inland. A diversion limit that allows 80 percent of the producer milk supply for the Puget Sound-Inland market to be diverted to nonpool manufacturing plants may therefore be too high to assure that pool plants in the Oregon-Washington market receive enough producer milk to satisfy their Class I needs.

It is apparent from analysis of the data supplied by the Oregon Milk Marketing Federation that during some months the organization currently finds it impossible to limit its diversions of producer milk to 60 percent of its production without engaging in unnecessary and inefficient movements of milk to pool plants. The 70- and 80-percent limit proposed by OMMF for the months of September through April, with no limit on diversions during May through August, should allow the Federation to assure the continued pooling of the milk of all of its members. Projections of production and OMMF deliveries to pool plants, based on the statistics in the hearing record and current rates of increase in production, indicate that the 70-percent limit during the months of greatest Class I use should accommodate OMMF activities for at least the next year. There is no reason to base diversion limits on the assumption that production will continue to increase indefinitely at the same rate as it had for the last few months of statistics in the hearing record. Therefore, a diversion limit which varies between 70 and 80 percent during the months of September through April and is adequately supported by the hearing record would appear to be more appropriate for the Oregon-Washington market at the present time than an 80-percent limit during those months for which there is no basis beyond conjecture.

In comments and exceptions filed in regard to the recommended decision, Darigold pointed out that the basis for determining the amount of milk of which a particular percentage may be diverted by a cooperative association has been omitted from the order language defining the term "Producer." The amount of milk on the basis of which a cooperative association's allowable diversions are computed should be the total volume of milk delivered to pool plants and diverted to nonpool plants by the cooperative. Such language has been incorporated in the order language included in this decision.

4. Allocation of Nonfluid Milk Receipts Used in Class II Products

The allocation provisions of the order should be changed to begin deducting the fluid milk equivalent of nonfluid milk receipts used to produce Class II products first from Class II use instead of from Class III, as proposed by Umpqua Dairy Products Company (Umpqua).

Umpqua urged that the portion of the classification provisions common to most milk orders that allocates to Class II use nonfluid milk receipts used in Class II products be incorporated in the Oregon-Washington milk order. The witness testified that Umpqua has Class III use in the form of diversions of producer milk to a nonpool cheese plant, butter churned at the dairy and shrinkage (milk lost or unaccounted for in hauling and processing). He stated, however, that in only 5 of the 17 months preceding the hearing was any producer milk at Umpqua allocated to Class III except as shrinkage. All of the producer milk diverted to the cheese plant or churned into butter during 12 of the preceding 17 months was allocated to Class II and billed to Umpqua at the Class II price because under the order nonfluid receipts used in Class II products are deducted first from Class III use. This reduced Class III use available for allocation purposes to the extent that producer milk receipts had to be allocated to Class II use. The witness explained that although Umpqua is obligated to the pool at the Class II price for milk used in Class III products but allocated to Class II, the handler is unable to recover more than the Class III price from the cheese plant operator or from sales of butter. He introduced an exhibit showing that the present treatment of nonfluid milk receipts in the allocation sequence costs Umpqua an average of $440 per month more than if the nonfluid receipts were allocated to the class in which they are used. In addition to the cost of the present allocation sequence, the witness explained that determining the cost of butter production in advance is impossible given the unknown factor of the class to which the skim milk and butterfat used to produce butter will be allocated.

The Umpqua representative included in his testimony data computed by the market administrator's office for the first five months of 1985 that show the impact the proposed change would have on the Oregon-Washington pool. The total pool values for the five months would have declined by an average of $6,830 per month, resulting in an average reduction in the weighted average price to producers of .4 cents per hundredweight. For none of the five months would the effect on producer prices have been as much as a whole cent.

Under cross-examination, the witness stated that the solids in nonfluid milk products are necessary ingredients in the manufacture of ice cream, and are not merely lower-cost substituted for producer milk. Use of such receipts does not, therefore, displace producer milk from Class II use to Class III. Under further questioning, the witness determined that, in fact, if the solids in producer milk receipts were easily extractable, producer milk would be a

lower-cost source of solids than nonfluid milk products.

A spokesman for a proprietary handler operating two distributing plants regulated under the Oregon-Washington Federal milk order and two under the Puget Sound-Inland order testified in support of Umpqua's proposal. He stated that allocation of nonfluid milk receipts used in Class II products under the Puget Sound-Inland order is done as proposed by Umpqua, and that the allocation provisions of the Oregon-Washington order should be amended to be the same as those in the Puget Sound-Inland order. He pointed out that the difference between the Class II and III prices in Oregon-Washington was a constant 25 cents per hundredweight for a number of years. However, he said, with the recent advent of advance Class II pricing, the price difference between the two classes varies by month, and has been as much as 60 cents. The witness stated that the potentially greater price difference between the two classes makes it more important that the nonfluid receipts used in Class II products be allocated to Class II.

The Darigold witness testified in favor of adoption of Umpqua's proposal to amend the allocation provisions. He stated that the classification provisions in the neighboring Puget Sound-Inland order and Oregon-Washington order should be the same so that handlers in the two markets who compete with each other for Class I and Class II sales would all be operating under the same rules and procedures.

The Oregon Milk Marketing Federation manager testified in favor of amending the order's allocation procedure as proposed by Umpqua. In addition, the brief filed by OMMF on the basis of the hearing record stated that the present allocation provision has the effect of upgrading the allocation of producer milk from Class III to Class II by assigning it to a use category in which it could not have been used. Curly's Dairy, a proprietary handler regulated under the order, filed a letter supporting the proposal. There was no oppositions to the proposed amendment.

There is ample testimony and data in the record to support adoption of the proposal to allocate nonfluid milk receipts used in Class II products to Class II use. It is evident that nonfluid milk products are needed in the production of Class II products and cannot be used interchangeably with producer milk for those purposes. Allocation to Class II use of the nonfluid milk receipts used in Class II products therefore could not have the effect of displacing producer milk from Class II use to the lower-valued Class III use.

It is also apparent that the present allocation sequence for nonfluid milk receipts creates accounting problems and unjustified extra costs for pool plant operators producing ice cream and other Class II products which require the use of nonfluid milk ingredients. These additional costs have the potential of making Oregon-Washington pool handlers unable to compete, not just with pool handlers in neighboring orders, but also with nonpool handlers manufacturing the same products.

5. Payments to Producers

The order should be changed to allow handlers to make direct final payments to their nonmember producers who are not paid on the basis of the State of Oregon Quota payment plan. At the present time, producers paid on the basis of their Federal order base and who are not members of a cooperative association must receive their final payments for each month's production from the market administrator. An amendment proposed by Umpqua Dairy Products Company would allow the handlers of such producers' milk to make direct payment for their milk rather than channeling payments through the market administrator.

The proposal was presented by Umpqua Dairy's secretary-treasurer and office manager. He explained that an Umpqua nonmember producer previously paid under the Oregon Quota system recently decided to drop his quota and be paid on his Federal order base. The witness expressed his surprise and dismay at the fact that final payment to the producer could no longer be made by Umpqua, but would have to be made by the market administrator. The witness stated that handlers are entrusted with the responsibility of paying assigned bills out of the amounts due to producers and making deductions for their insurance, and should be able to have the personal connection with the producer of issuing the check for final payment.

A witness representing Carnation Company testified in favor of the proposal. He stated that the handler does all of the accounting involved in paying producers and issues final payments to all of its other nonmember producers, so that adoption of such a procedure would not require any additional burden for handlers. The witness pointed out that allowing handlers to pay their own producers would save the market administrator the time and effort of doing so, and might reduce the cost of administering the order.

Witnesses for both Darigold and OMMF testified that the cooperative associations favored the proposal as contributing to the efficiency of the operation of the market administrator's office. There was no opposition to adoption of the proposal, either in testimony at the hearing or in post-hearing briefs.

Handlers ought to be able to make direct payments to the milk producers who represent their regular source of supply. The proposal made by Umpqua Dairy would enable them to do so, and should be adopted. Under the order's present provisions, the handler of the milk of a nonmember producer paid under the Federal base plan may pay various obligations on behalf of the producer and must make an advance payment for milk shipped by the producer during the first 15 days of the month, but may not issue the producer's final payment check for the month. The market administrator must issue the final payment to such producers, but does not make any payments directly to producers who are members of cooperative associations or who are paid under the Oregon State Quota system. Adoption of the proposal should remove the extra procedures required in both the handlers' and market administrator's payment process to accomplish the payment of nonmember Federal base producers, and thereby allow their operations to run more efficiently.

According to the language of the proposed amendment, a handler's failure to make any payments due under the order to producers or to the market administrator would cause payment responsibility to revert to the market administrator until the handler's obligations are kept current for a three-month period.

A new § 1124.33 entitled "Reports of payments to producers" should be added to the order to assure that the market administrator receives a copy of the final payment statement to each nonmember producer paid under the Federal base plan. The completed payroll should show the pounds of base, excess and total milk for which the producer is being paid, its butterfat content, the respective prices and total values of the milk, any adjustments and deductions, and the net amount paid to the producer. The check number and date of payment should also be reported.

6. Producer Base Percentages

A proposal by Darigold to increase the percentage by which base pounds are computed for a producer who has

not earned a daily base should not be adopted. Under the provisions of the order, producers are paid a higher, or "base", price for the portion of their production which does not exceed the daily average of their production during the market's base-building period. The base-building period is the market's four low months of production, usually Janaury, February, November and December. Bases are computed and issued each February 1 on the basis of the previous year's four low months. A producer who has not earned a daily base by producing milk for at least 90 days during the previous year's base-building period will have base pounds computed as a percentage of each month's production instead of using a daily average production history as a base. The percentage used for each month is specified in the order, and varies by month from 45 to 70 percent.

The witness representing Darigold testified that the base portion of the production of a producer who has not earned a daily base should be calculated by multiplying each month's production by 80 percent rather than by the present percentages specified in the order. He based the proposal on his contention that the present rates are not reflective of the current seasonality of production of dairy farmers in the area, and that they are unduly restrictive for producers who might wish to enter the Oregon-Washington market. The Darigold representative stated that a producer entering the market after February 1 in a given year would not earn a daily base until February two years later. As a result, the producer would be paid on the present variable base percentages for nearly two years. He further stated that the percentage of base pounds of producers on the market averages approximately 87 percent of their total production, and that the base pounds of producers entering the market without an earned base average only 61.3 percent of their total production.

The Darigold witness testified that the monthly base percentages in the Oregon-Washington order have not changed since the order was promulgated in 1970, on the basis of a 1968 hearing. He asserted that the seasonal pattern of production in the market has changed considerably since then, while the percentages by which base pounds are computed for producers without earned base have not been adjusted to reflect the market's changed seasonality. The witness described at length the history of the calculation of base percentages in the Puget Sound market in the 1950's, and stated that the base percentages in the Oregon-Washington order were derived from those percentages. He advocated updating the base percentages in the Oregon-Washington order by use of the same method used to adjust the Puget Sound percentages annually. By comparing monthly production in the current year with the average production for the four low production months of the previous year, the witness showed that seasonal variation of production in the Oregon-Washington market in 1984 was markedly less than that in Puget Sound in 1953, and somewhat less than in the Oregon-Washington market in 1971. He concluded that because seasonality of production has declined in the Northwest since 1953, base percentages should be constant throughout the year. He also concluded that because use of the formula used under the Puget Sound order in the 1950's to determine base percentages yields an average percentage of 84.9 for Oregon-Washington for 1984, the appropriate updated base percentage for Oregon-Washington would be 80 percent.

The proponent witness testified that base percentages in the Puget Sound order were adjusted downward from an initial range of 55 to 85 percent to a range of 45 to 70 percent, and indicated that the adjustment was needed because producers were relinquishing their daily bases to be paid on percentage bases while their production was increasing. As a corollary to the Darigold proposal, the witness proposed that the producers' option of relinquishing their earned daily bases be eliminated from the Oregon-Washington order so that producers would be prevented from choosing to be paid on percentage bases in order to increase their monetary returns while increasing production. He also proposed that any producer who transfers his earned daily base to another producer but continues to produce milk should not be able to use the monthly percentages provided by the order to be paid the base price for some of his production. Although neither of the additional two proposals was included in the hearing notice, the witness expressed his belief that both proposals are directly related to the question of percentage bases, and are important to the proper use and function of the order as proposed to be amended.

Under cross-examination, the witness indicated that if the base percentage were increased to 80 percent, he expected that some producers presently pooled under the Puget Sound-Inland order would attempt to pool their milk on the Oregon-Washington market in order to receive the benefit of the Oregon-Washington weighted average price, which is generally about 20 cents per hundredweight higher than the blend price in the Puget Sound-Inland market. He further testified that as producers changed from the Puget Sound-Inland market to the Oregon-Washington market, the Class I utilization percentage and prices paid to producers in the Puget Sound-Inland market would increase, while the Class I utilization percentage and producer prices in the Oregon-Washington market would decline. Although the witness stated that there probably would not be enough producer movement between the two markets to cause any significant change in the utilization percentage or prices paid to producers in either market, he also said that there are a lot of dairy farmers located in areas from which they could supply milk to either market. He indicated that the current base percentages are very likely the factor that has restrained producer movement from the Puget Sound-Inland market to the Oregon-Washington market. The witness stated that the purpose of a base plan is to even out seasonal variations in production, and that production in the Oregon-Washington market has become very level.

A representative of Carnation Company opposed the proposal on the basis that its adoption would lead to economic hardship for Carnation's nonmember producers whose milk is pooled under the Oregon-Washington order. He agreed that the lower producer price received by producers paid on percentage bases helps to keep producers from shifting from the Puget Sound-Inland market to the Oregon-Washington market. However, the witness expressed his company's concern that an increase in the returns to producers paid on percentage bases would cause Carnation producers in the Chehalis area to change Federal order markets, leaving Carnation with a shortage of milk to supply its Seattle plant. He testified that Carnation currently pays a premium to its producers who are pooled on the Puget Sound-Inland market, and that any change in the present equilibrium between the two markets that would encourage producers to change markets would create an unstable marketing condition.

The Carnation witness calculated that a new producer on the Oregon-Washington market who was paid on an 80-percent base would have received a price of $12.11 for this milk in June 1985, compared to the Oregon-Washington weighted average price of $12.10 for the same month. He stated that such a price

available to a producer who has no established relationship with the market would have the effect of attracting a flood of milk to the Oregon-Washington market from the Puget Sound-Inland market until the producer prices of the two markets are equal. He asserted that the result of lowering Oregon-Washington producer prices to the level of Puget Sound-Inland prices would be unfair to Oregon dairymen who have worked hard to produce at the amount of their base and keep their price advantage. The witness estimated that there are approximately 30 to 40 Puget Sound-Inland producers in the Chehalis and Yakima Valley areas that may find it advantageous to change to the Oregon-Washington market if they could obtain a higher price for their milk. He indicated that the 80-percent base proposal, if adopted, would increase the prices available to those producers enough to cause them to change markets and flood the Oregon-Washington market with unneeded supplies of milk that would serve only to depress producer prices. The witness credited the Federal order base plan and the Oregon State Quota system with discouraging uncontrolled production increases and thereby keeping surplus supplies in check. He expressed concern that an 80-percent base provision would have the opposite effect. Under cross-examination, the witness also made the point that relaxing supply plant pooling standards, diversion limits and "touch-base" requirements will make it much easier for the milk of producers with no real on-going association with the Oregon-Washington market to be pooled, and that the 80-percent base provision would allow such producers to enjoy a share of the pool equivalent to that accruing to producers with a long-standing role as suppliers of the fluid needs of the market.

An Oregon-Washington producer testified against adoption of the proposal. He stated that increasing the percentage base to 80 percent would have the effect of blending down the base price to producers already supplying the market while paying higher prices to new producers on the market then they are currently receiving. He questioned paying new producers a larger share of the base pool than producers who currently supply the Oregon-Washington market but produce less than 80 percent base milk. The witness testified that giving new producers a larger market share than the percentage they currently receive would only encourage additional milk production at a time when there are already excessive surplus supplies on the market which may result in additional government support price reductions.

A producer board member of Portland Independent Milk Producers, a cooperative association representing 35 to 40 producers pooled under the Oregon-Washington order, testified in opposition to the proposal. He stated that the proposal would allow an advantage to new producers wishing to ship to the Oregon-Washington market, and encourage unneeded additional production. The witness testified that in view of the present surplus of milk production, there is no injustice in requiring a new producer to ship milk at a slight disadvantage to established producers while earning a base within the system.

The Oregon Milk Marketing Federation manager testified that the Federation does not find it necessary to amend the order's base plan in any way. He quoted the promulgation decision (34 17701) as justifying the order's present base percentages as "adjusted seasonally to reflect the supply situation in the market. The lower rates in the flush production months should not encourage new producers to come on the market at a time when their production is not needed for Class I use. Neither are the stated percentages low enough to discourage entry into the market of a producer who intends to become permanently associated with the market." The witness testified that the base plan has not served as a barrier to the entry of new producers to the market, and introduced an exhibit that showed steadily increasing milk supplies in the market from 1971 through 1984 at an average annual rate of 4 percent. Over the same period, Class I use in the market increased at an average annual rate of only 2.4 percent. On the basis of that data, the witness concluded that adjustment of the base plan cannot be supported on the basis that it has brought about any milk shortage in the market. Instead, he stated, the declining relationship between Class I sales and production should not be reinforced by encouraging new producers to enter the market. The witness testified that the present percentage base provisions have discouraged seasonal dumping of surplus supplies from other markets on the Oregon-Washington market, and have helped to discourage wide seasonal fluctuations in the production of Oregon-Washington producers. He pointed out that if the present base plan has had the effect of excluding producers from the market, base would have developed a market value of its own. The fact that Federal order base never has developed any significant valve, he testified, is an indication that it does not serve to exclude the milk of new producers.

The OMMF witness testified that OMMF does not expect the Oregon-Washington base plan to prevent the shifting of producers between markets. In view of the present price difference between the Oregon-Washington and Puget Sound-Inland markets, he conceded, such a shift is inevitable. He stated that OMMF would prefer to see a shift that is gradual and orderly, rather than one which would lead to the development excess manufacturing capacity that would in turn provide an incentive to continue levels of surplus production in order to operate manufacturing plants at an efficient level. Under cross-examination, the witness indicated that during peak periods of milk productions, there is not enough manufacturing capacity in the Oregon-Washington market to provide outlets for the surplus production of producers already on the Oregon-Washington market.

A base plan is incorporated in an order for the purpose of smoothing out seasonal fluctuations of production. Such fluctuations tend to occur in opposite directions as fluctuations in demand for fluid milk. In the fall and winter months, when consumption of fluid milk is highest, milk production is generally at its lowest level of the year. Handlers needing milk for bottling purposes take a larger proportion of the market's supplies during the fall and winter months. In the spring and early summer, however, milk production peaks at the same time consumer demand for fluid milk products has declined. Plants that operate for the purpose of manufacturing storable dairy products out of surplus milk may find it difficult to handle all of the milk that is produced in excess of fluid consumption during the market's flush production period.

The variable base percentages were included in the Oregon-Washington base plan as part of an attempt to level out production fluctuations through the year. According to proponent's testimony, the present base plan appears to have had the desired effect on seasonal fluctations. However, although seasonal variation of production in the Oregon-Washington market has leveled out since promulgation of the order in 1970, seasonality is still a feature of milk production in this market. The month of highest average daily production in both 1982 and 1983 exceeded the month of

lowest average daily production by over 12 percent. For 1984, the seasonal fluctations declined to 10 percent but increased to over 19 percent in 1985. The years of 1984 and 1985 are unreliable for use in analysis of any milk production trends, however, because of the existence of the paid diversion program which was in effect from January 1984 through March 1985 for the purpose of encouraging dairy farmers to reduce production. Because of increasingly higher levels of milk production, seasonal peaks in production place at least as much burden on the capacity of the market to handle large surplus milk supplies as they did when seasonal variations in production were greater and the general level of production was lower. For this reason, it would be at least as undesirable to encourage new producers to enter the market during the months of high production at the present time as it was in 1970 when the order was promulgated and the present base percentages were included. It is apparent that the provisions of the present base plan have been effective in evening out seasonal fluctuations of production in the Oregon-Washington market. Adoption of a constant base percentage could very well reverse this trend and result in increased seasonal variations. Therefore, a constant base percentage throughout the year should not be adopted.

Federal milk orders cannot contain provisions that serve as barriers to the entry of any new producers or handlers who otherwise would have an opportunity to supply the needs of the market. In relation to the proposal to adopt a year-round percentage base of 80 percent, however, it cannot be found that the present variable base percentages accomplish such a barrier. There is testimony in the hearing record that producers convert freely from Grade B to Grade A status, and that new producers enter the market and established producers leave it, just as in any market without such a base plan. Given the average percentage that base pounds are of total producer milk, however, there may be some basis for increasing the variable percentages used to compute base pounds. Unfortunately, optimal percentages are not easily discernable from the hearing record. Until there is some indication that the present base percentages are causing disorderly marketing conditions, or that other base percentages would improve milk marketing conditions under the order, there is no basis upon which to change them.

With respect to producers wishing to change from the Puget Sound-Inland market to the Oregon-Washington market, such producers would be able to change markets with only a small decrease in price below what they have been receiving under the Puget Sound-Inland market. After being associated with the Oregon-Washington market for one base-earning period, the producer would be issued an earned daily base. Of course, a producer who changes markets as a result of a plant gaining pool status under the Oregon-Washington market would be eligible for a full producer base on the basis of milk deliveries to that plant. It is apparent from studying the pool statistics for the Puget Sound-Inland and Oregon-Washington markets for the months of July and August 1985 [1] that the present Oregon-Washington base plan provisions present no barrier to the entry of producers previously pooled under the Puget Sound-Inland market. The number of producers pooled under the Puget Sound-Inland order declined by 92 from July to August, while the number of producers pooled under the Oregon-Washington order increased by 88. At the same time, the difference between the Puget Sound-Inland and Oregon-Washington weighted average prices declined from 20 cents to 8 cents. Any price advantage enjoyed by Oregon-Washington producers appears to be rather vulnerable, and evidently not at all well-protected by the variable base percentages in the Oregon-Washington base plan.

If the proposal to change the base percentage to a constant 80 percent were adopted, it would not be possible to include the Darigold representative's suggested corollary to the proposal to eliminate the option of a producer to relinquish his earned base in favor of being paid on a percentage base. That part of the proposal is one on which producers would probably want an opportunity to comment. Failure to give adequate notice in the notice of hearing that such an amendment would be considered would constitute unfair treatment of such producers, and could not be justified. The witness had indicated that elimination of the base relinquishment option was important to the 80-percent base amendment. However, it would be inequitable to allow new producers to enter the market with a guarantee that 80 percent of their production would be base while depriving established producers of the same assurance.

[1] Official notice is taken of the Market Administrator's Report for Federal Order Nos. 124, 125 and 135 for the months of August and September 1985, Vol. 10, Nos. 8 and 9.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby

overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Oregon-Washington marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

October 1985 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Oregon-Washington marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: February 11, 1986.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [2] Amending the Order, Regulating the Handling of Milk in the Oregon-Washington Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Oregon-Washington marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on November 20, 1985, and published in the **Federal Register** on November 27, 1985 (50 FR 48776), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, with a modification of § 1124.11(a).

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. The authority citation for Part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 1124.2 is revised to read as follows:

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority and from whose farm milk previously has been received at a pool plant, if during the month milk from the same farm that was produced in compliance with the inspection requirements of a duly constituted health authority is received at a nonpool plant (except another order plant) as other than a diversion from a pool plant.

3. In § 1124.9, paragraph (b) the text preceding paragraph (b)(1) is revised to read as follows:

§ 1124.9 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent in any month of September through November and not less than 30 percent in any other month, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided,* That:

* * * * *

4. In § 1124.11, paragraphs (a) and (b) are revised to read as follows:

§ 1124.11 Producer.

* * * * *

(a) A cooperative association may divert for its account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is received subsequently at a pool plant in the same month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk which the association or its agent causes to be delivered to pool plants, or diverted therefrom. No diversion limit shall apply during the months of May through August. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of

[2] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator.

(b) A handler in its capacity as the operator of a pool plant may divert for his account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is subsequently received at a pool plant in the same month, and who is not a member of a cooperative association which is diverting milk pursuant to paragraph (a) of this section during the month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler during the month. No diversion limit shall apply during the months of May through August.

* * * * *

5. A new § 1124.33 is added to read as follows:

§ 1124.33 Reports of payments to producers.

On or before the 25th day after the end of the month, each handler paying producers who have not authorized a cooperative association to receive payment for their milk, and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, shall report to the market administrator in detail and on forms prescribed by the market administrator as follows for each such producer:

(a) The producer's name, address and days of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

6. In § 1124.46, paragraphs (a)(4) and (5)(i) are revised to read as follows:

§ 1124.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(*a*) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(*b*) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) * * *

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

* * * * *

7. In § 1124.82, paragraphs (c)(1) and (2) are revised and a new paragraph (c)(3) is added to read as follows:

§ 1124.82 Payments from the producer-settlement fund.

* * * * *

(c) * * *

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

[FR Doc. 86-3320 Filed 2-13-86; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1230

Pork Promotion, Research, and Consumer Information: Invitation To Submit Proposals for an Initial Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Invitation to submit proposals for an initial order.

SUMMARY: Interested persons are invited to submit proposals for a pork promotion, research, and consumer information order, as provided for by the Pork Promotion, Research, and Consumer Information Act of 1985 (Title XVI, Subtitle B of the Food Security Act of 1985).

DATES: Proposals must be received by March 3, 1986.

ADDRESS: Proposals (two copies) should be mailed to: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp (202-447-2650).

SUPPLEMENTARY INFORMATION: The Pork Promotion, Research, and Consumer Information Act (Title XVI, Subtitle B of the Food Security Act of 1985), enacted on December 23, 1985, provides for issuance by the Secretary of Agriculture of a national pork promotion, research, and consumer information program that would be funded by all domestic pork producers and all importers of porcine animals, pork, and pork products.

The Act permits that any person who may be affected by its provisions may

submit a proposal for an initial order. Accordingly, notice is hereby given that the Department of Agriculture will receive written proposals for a pork promotion, research, and consumer information order, or for various provisions thereof. Proposals must be submitted in duplicate to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250. Proposals should be received in the Department by March 3, 1986 to be ensured consideration.

Interested persons should refer to the provisions of the Pork Promotion, Research, and Consumer Information Act in preparing their proposals. Proposals that are authorized by the Act will be published in the **Federal Register** for public comment. All views received will be considered in the development of a final order.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Pork and pork products.

Signed at Washington, DC on February 12, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3390 Filed 2–13–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1260

Beef Promotion and Research; Invitation To Submit Proposals for an Initial Beef Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Invitation to submit proposals for an initial order.

SUMMARY: Interested parties are invited to submit proposals for a beef promotion and research order as provided for by the Beef Promotion and Research Act of 1985 (Title XVI, Subtitle A, of the Food Security Act of 1985).

DATE: Proposals must be received by March 3, 1986.

ADDRESS: Proposals (two copies) should be mailed to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Room 2610–S; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, (202/447–2650).

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act (Title XVI, Subtitle A, of the Food Security Act of 1985), enacted on December 23, 1985, provides for the issuance by the Secretary of Agriculture of a national beef promotion and research program that will be funded by all domestic cattle producers and all importers of cattle, beef, and beef products.

The Act permits that any person who may be affected by its provisions may submit a proposal for an initial order. Accordingly, notice is hereby given that the Department of Agriculture will receive written proposals for a beef promotion and research order, or for various provisions thereof. Proposals must be submitted in duplicate to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th Street and Independence Avenue SW., Room 2610–S; Washington, DC 20250. Proposals must be received in the Department by March 3, 1986, to be ensured consideration.

Interested persons should refer to the provisions of the Beef Promotion and Research Act in preparing their proposals. Proposals authorized by the Act will be published in the **Federal Register** for public comment. All views received will be considered in the development of a final order, which must be made effective within 120 days of the date of publication of proposed order.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef and beef products.

Signed at Washington, DC, February 12, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3389 Filed 2–13–86; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 111

Pollution Control Eligibility Policy

AGENCY: Small Business Administration.

ACTION: Proposed rule correction.

SUMMARY: This corrects the SBA's proposed rule governing the Pollution Control Financing Guarantee program published in the **Federal Register** on January 9, 1986 (51 FR 966–967.)

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Tallon, Office of Special Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Arlington, Virginia 22203 (703) 235–2902.

In the table appearing at 51 FR 966, the correct figures for the year 1985 should read 5 (five) for the total number of pollution control guarantees and 2 (two) for the number of waste disposal concerns. The corrected table should look like this:

Year	Total pollution control guarantees	Waste Disposal concerns
1980	93	[1] 16
1981	63	[1] 15
1982	3	1
1983	4	1
1984	4	0
1985	5	2

[1] Estimates.

Dated: February 5, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86–3306 Filed 2–13–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–164–AD]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes and amendment which would supersede an existing airworthiness directive (AD) applicable to Boeing Model 707/720 airplanes. The existing AD requires inspection and repair, as necessary, of cracks in the wing front spar upper chord. A recent reassessment by the manufacturer has revealed that the maximum allowable length of a crack which may be repaired in accordance with previous releases of the applicable service bulletin must be reduced from 2.5 inches to 2.0 inches. Cracks between 2.0 and 2.5 inches in length, previously repaired in accordance with the existing AD, may be subject to failure under maximum design conditions, and could result in buckling of the spar chord.

DATE: Comments must be received on or before April 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–164–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM–120S; telephone (206) 431–2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submiting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All coments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–164–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: On April 18, 1985, the FAA issued Amendment 39–5044 (50 fR 16465), AD 85–08–07, which requires inspection and repair of cracks on the wing front spar upper chord in accordance with Boeing Service Bulletin No. 3240, Revision 1, or later FAA-approved revisions. The amendmemt was prompted by numerous reports of corrosion and cracking, and in one case a 46-inch long crack, in the dry bay area. Revision 1 of Service Bulletin 3240 included repair schemes for chord cracks up to 2.5 inches in length; repairs of larger cracks had to be individually FAA-approved. Upon reassessment, it has become clear that the repair schemes in the service bulletin are inadequate for cracks exceeding 2.0 inches in length. The double nesting angle repair (Category III) of drawing 65C14869 does not provide adequate stability of the wing front spar upper chord for cracks exceeding 2.0 inches in length. This could result in a compression failure of the spar chord under maximum wing bending conditions.

Boeing has issued Revision 3 of Service Bulletin 3240 which limits the applicability of the repair called for in the previous revision to cracks less than 2.0 inches in length (the previous limit was 2.5 inches).

Since this situation is likely to exist or develop on airplanes of the same type design, this proposed rule would supersede the existing AD and require that Model 707/720 airplanes with cracks in the upper front spar chords which exceed 2.0 inches, be repaired in accordance with Boeing Service Bulletin 3240, Revision 3, or later FAA-approved revisions. Furthermore, airplanes previously repaired in accordance with Service Bulletin 3240, Revisions 1 or 2, which had cracks in the 2.0 to 2.5-inch range, must be reassessed and have repairs individually FAA-approved.

In addition, it has been established that inspections in accordance with Revisions 1, 2, and 3 are equivalent. Therefore, this proposal would not change the inspection requirement of the existing AD, but would specify inspections in accordance with Revision 1, or later FAA-approved revisions, of Boeing Serviče Bulletin 3240.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD. Airplanes which have been previously repaired would require approximately 40 manhours per airplane to review the existing repairs. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed reassessment would be $28,800.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulations which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

2. By superseding Airworthiness Directive (AD) 85–08–07, Amendment 39–5044 (50 FR 16465; April 26, 1985), with the following new airworthiness directive:

Boeing: Applies to Model 707 and 720 series airplanes, certificated in any category, with 15,000 or more landings. To ensure continued structural integrity of the wing front spar upper chord, accomplish the following within 100 landings or 60 days, whichever occurs first, unless previously accomplished within the last 900 landings or 305 days:

A. Perform a close visual inspeciton of the wing front spar upper chord for cracks in accordance with Boeing Service Bulletin 3240, Revision 1, or later FAA-approved revision. Repeat the inspection at intervals not to exceed 1,000 landings or one year, whichever occurs first.

B. If cracks or corrosion areas are found, repair prior to further flight in accordance with Boeing Service Bulletin 3240, Revision 3, or later FAA-approved revision, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Cracks which have been repaired in accordance with the "stop drilling" procedure described in Part III, Figure 2, of Service Bulletin 3240 Revision 3, or later FAA-approved revision, must be visually inspected at intervals not exceeding 300 landings, until permanently repaired in accordance with Part III, Figure 2, of Service Bulletin 3240, Revision 3, or later FAA-approved revision, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. A permanent repair must be completed within 1,000 landings or one year, whichever occurs first after the effective date of this AD.

D. Cracks between 2.0 and 2.5 inches in length, which have been previously repaired in accordance with Boeing Service Bulletin

3240, Revision 2, or earlier, must be repaired in accordance with Revision 3, or later FAA-approved revision, or repaired in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, within 1,000 landings or one year, whichever occurs first after the effective date of this AD.

E. After each of the above inspections and repairs have been performed, apply BMS-3-23 corrosion inhibitor, or equivalent, to the affected areas.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents form the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This AD supersedes AD 85-08-07, Amendment 39-5044.

Issued in Seattle, Washington, on February 6, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-3243 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-1]

Proposed Alteration of Transition Area; West Branch, MI

AGENCY: Federal Aviation Admininstration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the West Branch, Michigan, transition area to accommodate a new VOR Runway 27 Standard Instrument Approach Procedure (SIAP) to West Branch Community Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before March 20, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Admininstration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone, (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate a new VOR Runway 27 SIAP. The additional airspace designated will be approximately a one-mile radius expansion and a one-mile expansion to the east of the airport on the West Branch VOR 083 radial.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area near West Branch, Michigan.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending Section 71.181 by revising the following transition area to read as follows:

West Branch, MI

That airspace extending upward from 700 feet above the surface, within a 6.5 mile radius of the West Branch Community Airport (lat. 44°14'36" N., long. 84°10'58" W.) and within 3 miles each side of the 087° bearing from the airport, extending from the 6.5 mile radius area to 13 miles east of the airport and within 3 miles each side of the West Branch VOR 083 radial, extending from the 6.5 mile radius area to 7.5 miles east of the airport.

Issued in Des Plaines, Illinois, on February 4, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86–3139 Filed 2–13–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mines; Ventilation; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's preproposal draft standards for ventilation for underground coal mines in 30 CFR Part 75.

DATES: Written comments on the preproposal draft for ventilation standards must be received on or before April 4, 1986.

ADDRESSES: All comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone: (703) 235–1910.

SUPPLEMENTARY INFORMATION: On November 19, 1985, MSHA published a notice (50 FR 47702) announcing the availability of a preproposal draft of revisions to current ventilation standards for underground coal mines. The comment period was scheduled to end on February 18, 1986. Due to requests from the public, MSHA is extending the time for commenting on this preproposal draft. The comment period is extended to April 4, 1986. All interested members of the mining community are encouraged to submit comments prior to that date.

Dated: February 10, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 86–3322 Filed 2–13–86; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 173, 174, 175, 177, 179, 181, and 183

46 CFR Part 25

[CGD 86–012]

Review of Boating Safety Regulations

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard will be conducting a comprehensive review of currently effective Boating Safety regulations at the next meeting of the National Boating Safety Advisory Council in Virginia Beach, VA, on May 13–14, 1986. The purpose of the review is to determine if any of the Coast Guard Boating Safety regulations are in need of change or revision. This notice describes the existing regulations that will be reviewed and solicits comments from the boating public in response to specific questions related to the review.

DATES: Comments are requested by April 7, 1986.

ADDRESS: Written comments should be mailed or delivered to the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Comments will be available for inspection at this address between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays. Persons submitting comments should refer to the docket number of this notice (CGD 86–012), identify the specific Boating Safety regulations on which comments are being submitted, state what changes in the regulation are necessary, and provide reasons to support the recommended changes.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Regulatory Coordinator, Office of Boating, Public, and Consumer Affairs, (202) 426–1080. Normal office hours are between 7:30 a.m. and 4:00 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) provides advice to the Coast Guard on significant boating safety matters. The Council consists of 21 members drawn equally from three segments of the boating community: the boating industry; State boating safety officials; and the general boating public. The Coast Guard consults with NBSAC in the formulation of all Coast Guard Boating Safety regulations.

The Coast Guard conducted its first comprehensive review of the Boating Safety regulations in May 1981 as part of the NBSAC meeting held in Newport, R.I. The Coast Guard asked NBSAC to review the regulations to determine if they were still necessary, beneficial, cost-effective, and in step with current technology. As a result of that review, NBSAC made many recommendations to improve and update specific provisions in the regulations.

Because of this experience, the Coast Guard has decided to conduct similar reviews with NBSAC at approximately 5 year intervals. The next review is scheduled to take place at the NBSAC meeting on May 13–14, 1986, in Virginia Beach, VA. The meeting will be open to the public. (Details of the exact time and location of the meeting will be published in the notices section of the **Federal Register** at a later date). The review will encompass existing Coast Guard regulations that have been issued under the authority of the Chief, Office of Boating, Public, and Consumer Affairs at Coast Guard Headquarters. The review will not consider any proposed rules not yet issued as final rules. The existing regulations to be reviewed include:

- Permit requirements for persons organizing Marine regattas and parades (Part 100 of Title 33, Code of Federal Regulations).
- Requirements for boat operators and States in boat numbering and

accident reporting (Parts 173 & 174 of Title 33, Code of Federal Regulations).

• Operator requirements for carrying personal flotation devices on boats (Subpart B of Part 175, Title 33, Code of Federal Regulations).

• Operator requirements for carrying visual distress signals on boats (Subpart C of Part 175, Title 33, Code of Federal Regulations).

• Requirements for boat operators in especially hazardous conditions (Part 177 of Title 33, Code of Federal Regulations).

• Boat and associated equipment manufacturer and importer requirements for safety defect notification and recall (Part 179 of Title 33, Code of Federal Regulations).

• Boat manufacturer and importer requirements for certification of compliance (Subpart B of Part 181, Title 33, Code of Federal Regulations).

• Boat manufacturer and importer requirements for hull identification numbering (Subpart C of Part 181, Title 33, Code of Federal Regulations).

• Personal flotation device manufacturer requirements for instruction pamphlets (Subpart G of Part 181, Title 33, Code of Federal Regulations).

• Boat manufacturer requirements for the determination and display of safe loading and safe powering capacities (Subparts B, C, D, and N of Part 183, Title 33, Code of Federal Regulations).

• Boat manufacturer requirements for flotation performance (Subparts F, G, and H of Part 183, Title 33, Code of Federal Regulations).

• Boat manufacturer requirements for electrical and fuel systems (Subparts I & J of Part 183, Title 33, Code of Federal Regulations).

• Boat Manufacturer requirements for engine and fuel tank ventilation systems (Subpart K of Part 183, Title 33, Code of Federal Regulations).

• Outboard engine manufacturer requirements for start-in-gear protection (Subpart L of Part 183, Title 33, Code of Federal Regulations).

• Operator requirements for carrying fire extinguishers on boats (Subpart 25.30 of Title 46, Code of Federal Regulations).

• Operator requirements for carrying backfire flame arrestors on boats (Subpart 25.35 of Title 46, Code of Federal Regulations).

• Operator requirements for engine and fuel tank ventilation systems on boats (Subpart 25.40 of Title 46, and Subpart D of Part 175, Title 33, Code of Federal Regulations).

The Coast Guard is soliciting comments from all segments of the boating community on recommended changes to these existing regulations, including elimination or revocation of a requirement. The Coast Guard is particularly interested in receiving views, data and reasons on the following review questions:

• *Need*—Is there still a reasonable need for the regulation? Is the problem the regulation was originally intended to solve still relevant?

• *Technical Accuracy*—Has the regulation kept pace with changes in technological, economic, or other relevant conditions? Are there any changes that could be made to the regulation that would make it more effective in achieving its intended goal?

• *Cost/Benefit*—What are the costs or other burdens/adverse effects of the regulation? What are the perceived benefits of the regulation in terms of personal safety or in other terms? Do the costs outweigh the benefits?

• *Problems*—Are there any problems or complaints in understanding or complying with the regulation?

• *Alternatives*—Are there any non-regulatory ways to achieve the goal of the regulation at a lower cost or reduced burden?

All comments received by the Coast Guard as a result of this notice will be summarized and provided to NBSAC for their consideration prior to the May meeting. The Coast Guard will consider all relevant comments in the formulation of any changes to the Boating Safety regulations.

Dated: February 10, 1986.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86-3216 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 140, 143, and 149

46 CFR Parts 107, 108, and 109

[CGD 79-059]

Offshore Cranes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to issue regulations concerning offshore crane design standards and operation on Outer Continental Shelf (OCS) facilities, on deepwater ports, and on mobile offshore drilling units (MODUs). Presently, the only regulations for cranes apply on MODUs; yet the hazards of crane operation on OCS facilities and deepwater ports are in many ways similar to those on MODUs. This rulemaking proposes to apply crane requirements to OCS facilities and deepwater ports and to clarify and eliminate unnecessarily burdensome requirements from the existing regulations for cranes on MODUs. These proposals are intended to reduce the degree of hazard associated with crane operation.

DATE: Comments must be received on or before June 16, 1986.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 79-059), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593. Comments will be available for inspection or copying at the Office of the Marine Safety Council (G-CMC), Room 2110, at the above address, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. The telephone number is (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Lt. William T. Burke, Office of Merchant Marine Safety, (202) 426-2307.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 79-059) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. Persons desiring acknowledgement that their comments have been received should enclose a stamped, addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are LT William T. Burke, Project Manager, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Project Counsel, Office of the Chief Counsel.

Background and Objectives

On January 10, 1980, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (45 FR 2052) entitled "Standards for Offshore Crane Design, Inspection, Testing, Operation, and Operator Qualification." The ANPRM

requested the public's response to numerous questions relating to what, if any, regulations are needed to promote safe crane operations offshore. A total of thirty-five comments were received from a cross section of oil companies, manufacturers, offshore operators, and standards development organizations.

Twenty-one comments urged that design and equipment requirements be based on American Petroleum Institute (API) Specification for Offshore Cranes, API Spec. 2C. This performance standard is currently applied under Coast Guard regulations to cranes on mobile offshore drilling units and under the Minerals Management Service's Outer Continental Shelf (OCS) Order #5, Section 7. To be consistent with current regulations and OCS Orders, this proposal adopts that standard.

One comment requested that casualty statistics, including age, number of accident free hours, and the design standard of each crane on which the statistics are based, be published to aid in evaluating the necessity of design regulations. The Coast Guard does not have detailed information of this type. A review of over fourteen hundred general personnel casualty reports on file for the years 1982 and 1983, however, revealed that structural failure of cranes, including cases of overloading, accounted for approximately 5% of personnel casualties occurring during crane operations on MODUs and platforms. The incidence of structural failure is clearly uncommon. Therefore, the Coast Guard has included a proposal to accept an authorized API nameplate as an indication of compliance with the standard in API Spec. 2C. By precluding the need for a separate plan review for each crane, use of the API nameplate would likely be the least expensive means of achieving compliance. Because this procedure, if adopted, would be a significant departure from our current requirements for cranes on MODUs, the Coast Guard specifically requests comments on the use of API nameplates as an indication of compliance with design requirements.

While structural failure accounts for approximately 5% of personnel casualties during crane operations, the vast majority (over 85%) can be attributed to errors made by crane operators, load riggers (loaders), and signal persons. The most commonly recurrent cause of personnel casualties during crane operations are injuries to personnel acting as loaders/signal persons while maneuvering the load or by workers improperly being in the vicinity of the loading operation. Of seventy-four personnel casualties involving cranes identified for the years 1982 and 1983, fifty-one occurred in this fashion. This proposal would adopt the operator qualifications currently outlined in API Recommended Practice (RP) 2D, "Operation and Maintenance of Offshore Cranes," while adding a more detailed requirement that the person in charge of the unit or facility designate the crane operator in writing after considering recommended minimum qualifications more specific than those outlined in API RP 2D. Consistent with this approach, this proposal outlines the minimum familiarity with proper procedures required prior to acting as loader/signal person, as well. These proposed regulations do not make formal training for crane operators mandatory. Instead, the person in charge of the unit or facility is required to designate personnel who are qualified after considering recommended minimum qualification requirements. Because the casualty data indicates the eighty to ninety percent of crane-related personnel casualties can be attributed to either operator or loader/signal person error, we are particularly interested in comments about the adequacy of this proposed approach to operator designation, and loader/signal person training.

In addition, crane operation at sea can result in both static loading and dynamic loading when the crane is used to make lifts to or from a vessel. The recently published third edition of API Spec. 2C addresses the dynamic rated load. The safety margin which results from use of API Spec. 2C will, in most instances, compensate for the operator error of overloading the crane.

Based upon a review of the comments submitted, the Coast Guard has decided to take the following actions at this time:

a. To propose amendments to the existing provisions relating to cranes on mobile offshore drilling units (MODUs) under Subchapter I–A, Chapter I, Title 46 of the Code of Federal Regulations (CFR), to incorporate the latest industry standards, simplify the approval process for cranes, correct certain errors, clarify misleading provisions, and correct out of date addresses.

b. To propose that a new subpart be added to Subchapter N, Chapter I, Title 33 of the CFR which would apply provisions similar to those in paragraph (a) above to cranes on Outer Continental Shelf (OCS) facilities.

c. To propose that a new section be added to Subchapter NN, Chapter I, Title 33 of the CFR which would apply, by cross reference, the provisions of paragraph (b) above to cranes on deepwater ports.

The overall effect of this approach would be to revise the existing regulations for cranes on MODUs and apply similar provisions to cranes on OCS facilities and on deepwater ports.

Amendments to Title 33 and 46 Combined into a Single Rulemaking

Amendments to more than one title in the Code of Federal Regulations (CFR) normally require separate rulemaking publications in the **Federal Register**. The Coast Guard, as a Federal agency, is somewhat unusual in having the bulk of its regulations located in two titles of the Code of Federal Regulations (33 and 46) rather than one. Because of the importance in making, where appropriate, the requirements for cranes on OCS facilities and deepwater ports (Title 33) consistent with the proposed requirements for cranes on MODUs (Title 46), the Coast Guard has received permission to combine these proposed amendments into a single document. To do otherwise would be a disservice to the reader, complicate submission and review of comments, and clutter the **Federal Register** with duplicative documents.

Discussion of Proposed Amendments

The proposed amendments will be discussed as needed in the order in which they appear in this document.

Title 33, Subchapter N–OCS Activities

A new Subpart E (Cranes) is proposed to be added to Part 143 of Subchapter N to address cranes on OCS facilities.

Proposed § 143.403. This subpart would apply to cranes on "OCS facilities". The term "OCS facility" is used throughout Subchapter N and is defined in that subchapter's definition section (33 CFR 140.10). In general, an "OCS facility" means any artificial island, installation, or other device permanently or temporarily attached to the subsoil or seabed of the Outer Continental Shelf, erected for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources. The term does not include any pipeline or deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502)). Proposed paragraph (a) lists certain cranes which would be excluded from regulation under this subpart, such as cranes on MODUs. Cranes on MODUs engaged in OCS activities are regulated through the application of Subpart C of 33 CFR Part 143.

Cranes which are designed and used (dedicated usage) as part of a separate industrial system, such as blowout preventer gantry cranes, diving bell hoists, and air hoists, would be excluded, because they are not used for loading, offloading, and transferring material on the unit. These cranes are regulated, where necessary, as part of their associated industrial system.

Proposed § 143.404. This proposal incorporates by reference certain provisions of the American Petroleum Institute Specification for Offshore Cranes (API Spec. 2C) and Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D). These publications are based on industry experience and expertise and are intended as an aid or guide. However, for the purposes of these proposed regulations, reference in the regulations to provisions in these publications would make those provisions mandatory. This section is added to clarify this point.

Proposed § 143.405. Application of the incorporated API provisions discussed above or any other provision in this subpart may not, in every case, by appropriate. There may be other acceptable alternatives that provide an equivalent or greater level of safety. Section 143.405 would provide a procedure whereby the Coast Guard Officer in Charge, Marine Inspection may authorize deviations from the requirements for cranes in this new Subpart. This provision is in addition to, and would supplement, the broad provision for review of equivalent equipment or procedures in existing § 140.15.

Proposed § 143.406. This section would require crane owners to ensure that their cranes, other than cranes under the grandfather provision discussed below, meet the performance standards in API Spec. 2C as well as certain additional requirements. A grandfather provision would exempt cranes which were contracted for construction, under construction, or installed on a unit before the effective date of final regulations from compliance with this section.

Proposed § 143.407. This section would establish three means of verifying that a crane was designed and equipped to the performance standards in API Spec. 2C. The first means is by use of an API nameplate described in Section 15 of API Spec. 2C. As provided under Section 1.1.3 (d) of API Spec. 2C, use of the API monogram which appears on the nameplate is a warranty by the manufacturer to the purchaser that the manufacturer has obtained a license from API to use the monogram and that the product which bears the mongram conforms to the applicable API standard.

A second means is through certification by organizations and associations recognized by the Coast Guard under the procedure set forth in proposed § 143.409. This procedure, involving plan review, is similar to the certification process now in effect for MODUs.

A third means is by statement of the crane's manufacturer certifying that the crane is a duplicate of one already certified under proposed § 143.409. By use of manufacturer's statements, a separate plan review for each duplicate crane is avoided.

The mere fact that a crane has an API nameplate or is otherwise certified is only evidence that it is in compliance with the API standards. If, in fact, the crane is not in compliance, it would have to be brought into compliance before being used on an OCS facility.

Proposed § 143.409. This section describes the procedures for obtaining crane certification from a crane approval authority recognized or accepted by the Coast Guard in the event that the crane does not carry a valid API nameplate or is not a certified duplicate. The crane approval authorities are discussed further under proposed § 108.604 in this preamble.

Proposed § 143.411. This section would establish requirements applicable to alterations made to both new and grandfathered cranes. Whenever a crane is altered, as opposed to merely having a component replaced with one of like design and materials, this section would require the alteration to meet either the current performance standards in API Sec. 2C or, if grandfathered, the original design standards of the component in question.

Proposed § 143.413. To accomodate proposals for the use of mobile cranes, this section sets the rated load requirements for mobile cranes, based on the lesser of the load limits required to meet API Spec. 2C or the load limits necessary to guard against tipping of the mobile crane on its base. The rated load must not be greater than 67 percent of the load which would cause the crane to begin to tip. This margin allows for the dynamic loading which occurs when lifting loads at sea.

Proposed § 143.415. This section describes inspection requirements. It is similar to the existing inspection section for cranes on MODUs (46 CFR 107.259) but, as explained in this preamble under the discussion of proposed §107.258, is less burdensome on industry.

Proposed §143.417. This section describes the crane testing requirements under this Part. It is more flexible than the requirement of MODUs under existing or proposed 46 CFR 107.260 insofar as there is no mandatory load test or non-destructive testing requirement on a quadrennial basis. This exception reflects the lower dynamic loading and less intensive use of cranes on facilities as compared with MODUs. Since no provision is made under proposed §143.405 for replacement of parts or repairs to critical components that do not equal or exceed the original specifications, no load test is required as described in Section 3.2.2 of API RP 2D. This proposed section would require that each crane installed on the facility be operationally tested upon installation and following major repair. This requirement is consistent with Section 3.2.1 of API RP 2D.

Proposed §143.419. This section is based upon the operation and maintenance requirements in effect for cranes on MODUs (46 CFR 109.521 and 109.525). Compliance with the provisions of API RP 2D concerning operation and maintenance is currently mandatory under Minerals Management Service OCS Order #5, Section 7.

Proposed §143.421. This section is similar to existing 46 CFR 109.527 for crane operator designation on MODUs but clarifies responsibilities of the person in charge and adds factors to be considered by the person in charge in designating operators. The Coast Guard historically has not issued licenses or certificates of competency for industrial occupations and believes that the person in charge (supervisor) is in the best position to determine if an operator is qualified to competently and safely operate a crane.

Under this section, the person in charge would be responsible for permiting only designated operators, trainees, and inspectors to operate cranes on the unit and the individual operator would be designated with respect to a particular crane. If the operator is qualified to operate one type of crane, the operator may not necessarily be qualified to operate other types. Proposed paragraph (d) would require that the name of the operators designated to operate a particular crane be entered into the crane record book for that crane.

In considering whether a particular operator should be designated as qualified to operate the crane in question, the person in charge would have to consider whether the operator, by reason of experience, training, and skill, is capable of conducting safe operations. In view of the variety of

cranes and differing installations, and the need for individualized designation, no fixed criteria for training or experience are proposed. Instead, to assist the person in charge, proposed paragraph (c) lists factors which the person in charge shall consider in evaluating the operator.

Proposed §143.422. This section specifies minimum qualifications for persons acting as load riggers and/or signal persons on the facility. The person in charge would ensure that minimum qualifications are held by workers involved in load rigging and signalling. This requirement is considered to be necessary in order to emphasize the need to place only qualified persons in these positions. As outlined in the Background and Objectives section of this NPRM, available casualty statistics clearly demonstrate that unsafe loading and unsafe movements by loaders and/or signal persons comprise the single most prevalent cause of personal injury during crane operations. Because these functions have general applicability and are not related to individual crane operating characteristics, establishing minimum qualifications appears feasible.

Although this proposed section would require all load riggers and signal persons to be "qualified" or be a trainee working toward qualification, the Coast Guard is considering adding an additional requirement—that the qualified load riggers/signal persons be designated in writing as would be required for crane operators under proposed §143.421(o). In recognition of the higher turnover rate of personnel employed in load rigging and signalling, the Coast Guard is concerned that the benefits to written designation of loaders and signal persons may be outweighed by the paperwork burdens and has not included this in the items submitted of the Office of Management and Budget for approval under the Paperwork Reduction Act. Specific comments on the desirability of written designation of loaders/signal persons is requested, along with comments on the proposed qualifications.

Proposed §143.423. This section is based on existing 46 CFR 109.437 concerning crane record keeping on MODUs. Under proposed §143.423, each crane on the facility must have a crane record book. It would be permissible to combine the information on more than one crane into a single volume as long as it is clear which crane is being addressed.

Proposed § 143.425. This section would require that crane certificates, approval letters, and other documents relating to the crane be maintained as part of, or at the same location as, the crane record book.

Title 33, Subchapter NN—Deepwater Ports

This proposal would add a single section (33 CFR 149.219) to the existing deepwater ports regulations in order to apply the regulations already discussed for cranes on OCS facilities to cranes on deepwater ports. The deepwater ports regulations (Subchapter NN) are located immediately after the OCS regulations (Subchapter N) in the same volume of the Code of Federal Regulations. By merely cross-referencing the crane regulations, a restatement in Subchapter NN of the entire set of regulations proposed for Subchapter N would be avoided.

In applying the provisions of Subchapter N to cranes on deepwater ports, the reader would substitute the term "deepwater port" for "facility" and "Port Superintendent" for "person in charge" wherever "facility" and "person in charge" appear in the text of Subchapter N. Otherwise, the requirements for cranes on OCS facilities and deepwater ports would be the same.

Title 46, Subchapter I–A—Mobile Offshore Drilling Units

Existing Subchapter I–A already contains requirements for cranes on U.S. flag MODUs. The proposed amendments to Subchapter I–A are basically intended to improve procedures, correct errors, clarify misleading provisions, and update addresses and references to API standards. The effect of these amendments should reduce the overall burden imposed by the existing regulations while reducing the degree of hazard associated with crane operations. In addition, they should facilitate the Coast Guard's ability to administer, and the operator's ability to comply with, the requirements. The grandfather provisions in Appendix A to existing Part 109 (NVC 4–78) would continue to apply.

To indicate alignment with the proposed changes to 33 CFR Parts 140 and 143 and to avoid duplication of comments within this preamble, the following comments on proposed changes to Subchapter I–A include a reference to similar proposed amendments to Parts 140 and 143.

Part 107—Inspection and Certification

Proposed § 107.115. This provision is similar to proposed § 143.404 on incorporated material. The addresses for American Bureau or Shipping and the American Petroleum Institute are corrected.

Proposed § 107.116. This is a new section similar to proosed § 143.405 and concerns authorization to deviate from the crane requirements.

Proposed § 107.231. The existing provision refers to inspection and testing under § 107.258. Proposed § 107.258, however, would relate to inspection and proposed § 107.259 to testing. Existing paragraph (o) would be revised to include § 107.259.

Proposed § 107.258. Existing § 107.258, concerning crane approval, would be transferred to proposed § 108.604. The new § 107.258 would address crane inspection and is similar to existing § 107.259 and proposed § 143.415.

Paragraphs (a) and (b) in existing § 107.259, as worded, require that every inspection called for in Section 3 of API RP 2D, including frequent and periodic inspections, be conducted by the Coast Guard or a recognized crane approval authority. The proposed change states that only the annual inspection would have to be conducted by one of these organizations.

Paragraph (b) in this proposed section differs from proposed § 143.415(b) insofar as no allowance is made on MODUs for inspection by the crane manufacturer's inspector. The annual inspection would be required to be conducted by the Coast Guard or by a recognized crane approval authority. This is in response to the more intensive use on MODUs of cranes under conditions of greater dynamic loading.

Paragraph (b)(2) of existing § 107.259 limits inspections by ABS and the International Cargo Gear Bureau to cranes certified by those organizations. Section 107.258 would permit the recognized crane approval authority to conduct annual inspections under this section on all cranes regardless of which organization certified them or whether the crane has an API nameplate.

Proposed § 107.259. This is similar to proposed § 143.417 on operational tests.

Proposed § 107.260. This section would make several changes to existing § 107.260-on load testing.

Proposed paragraph (b) would require that load tests and non-destructive tests be witnessed by a representative of the Coast Guard or a recognized crane approval authority. This is already required by existing § 107.259(b) but would be transferred to proposed § 107.260 to combine it with other provisions relating to load testing.

Proposed paragraph (c) would make it clear that the person in charge is responsible for ensuring compliance with the load test requirements in this

section. In addition, paragraph (c) lists the times when a load test would be required. These intervals are the same as in paragraph (c) of the existing § 107.260(c), with the exception that proof load testing is mandatory only upon initial installation.

Though most comments received by the ANPRM indicated that load tests are presently conducted on extensively repaired or altered cranes (as specified by Section 3.2.2(a) of API RP 2D) and new installations, many comments objected to the four year requirement. They suggested that periodic tests would unnecessarily overstress the crane and increase the crane's chances of failure during normal operations. However, a crane under API Spec. 2C is designed to withstand a load 33 percent greater than its static rated load, whereas proof loads exceed the static rated load by, at most, only 25 percent. Therefore, it is unlikely that components will be overstressed unless they have been weakened by corrosion or damage and need replacement. In light of the strong interest in the subject of periodic load testing, the Coast Guard is offering, in proposed paragraph (d), the option of non-destructive testing of critical components, those whose failure would result in either loss of load control or structural instability of the crane, in lieu of a load test every four years. Interested parties are requested to respond specifically to this issue. Detailed information, statistical data, and case histories would be appreciated.

Proposed paragraph (c)(3), concerning load testing when a critical component is altered, repaired, or replaced, would add to the existing provision an option to conduct non-destructive testing of these components in lieu of proof load testing.

Proposed paragraph (g) would allow smaller proof loads if the crane loading is limited by relief valves or other devices. In such cases the limiting load, provided it is greater than the static rated load, could be used as a proof load.

Proposed paragraph (h) would require a thorough visual examination following proof loading to check for structural damage.

Paragraph (i) is new and would require the crane owner to supply the equipment and personnel necessary to perform the load test or non-destructive test.

Proposed § 107.305. The requirement for plan review of crane foundations and substructure would be reworded and transferred to this section from existing § 107.309.

Proposed § 107.309. The existing section would be removed. The provisions of this section have been transferred to proposed § 108.604 to combine them with other provisions relating to design approval.

Proposed § 107.317. The address for the American Bureau of Shipping would be corrected. The reference to existing § 107.309 would be deleted because § 107.309 would be removed, as described above.

Part 108—Design and Equipment

Proposed § 108.601. This section is similar to proposed § 143.406 on design and performance standards. The requirements in proposed paragraphs (b), (c), and (d) are from existing § 108.601(b) (2), (3), and (4). The provisions in existing § 108.601(b) (1) and (5) concerning marking of controls and use of spark arrestors are excluded from this proposal because they are now addressed in the latest edition of API Spec. 2C. Proposed paragraph (e) on load indicating devices is added because of its deletion from the latest edition of API Spec. 2C. Proposed paragraph (b) restates an existing requirement concerning electrical equipment in hazardous areas. Cranes currently grandfathered under Appendix A to existing Part 109 would remain grandfathered.

Proposed § 108.603. This is a new section similar to proposed § 143.407, which lists the means of evidencing conformance to the standards in API Spec. 2C. Currently, the MODU regulations provide for mandatory plan review of cranes. This proposal would exempt cranes with API nameplates or duplicate cranes from having to be separately certified.

Proposed § 108.604. This section on crane approval is similar to proposed § 143.409 and is presently located in §§ 107.258 and 107.309. The list of authorities for crane approval (ABS, ICGB, and the Coast Guard) would be revised to delete the Coast Guard and to add "other similar classification societies accepted by the Commandant." Permitting the use of other accepted classification societies would align this provision with current Coast Guard requirements for cargo gear in Chapter I of Title 46.

Proposed § 108.605. This is a new section added for the purpose of clarifying the special requirements contained in existing § 107.309(b) which apply to electrical and hydraulic systems on MODUs and providing for approval of those systems by a recognized crane approval authority or for certification by a U.S. registered professional engineer.

Proposed §§ 108.607 and 108.609. These are new sections similar to proposed §§ 143.411 (approval of alterations) and 143.413 (mobile crane rating).

Part 109—Operations

Proposed § 109.437. This proposal would revise existing § 109.437 on crane record books to align it with proposed § 143.423. New paragraph (b)(2) would require entering the name of each person designated under proposed § 109.527 as qualified to operate the crane.

Proposed § 109.439. This proposal would amend existing § 109.439. It is similar to proposed § 143.425.

Proposed § 109.521. This section on operation and maintenance is revised and aligned with proposed § 143.419.

Proposed § 109.525. The existing section would be removed. Tables indicating the safe working loads for various angles of the boom would be required by application of Section 2.3 of API Spec. 2C.

Proposed § 109.527. This proposal substantially revises existing § 109.527 and aligns it with proposed § 143.421 on operator designation.

Proposed § 109.528. This section is new and is similar to proposed § 143.422 on load riggers and signal persons.

Incorporation by Reference

The American Petroleum Institute documents, API RP 2D (Second Edition, June 1984) and API Spec. 2C (Third Edition, March 1983), are proposed for incorporation by reference. Copies of this material are available for inspection at U.S. Coast Guard Headquarters, Room 1404, 2100 Second Street, SW., Washington, D.C. 20593. A copy of the material may be obtained at the addresses listed in proposed 33 CFR 140.7 and 46 CFR 107.115.

Before the final rule is published, the Coast Guard will submit this material to the Director of the Federal Register for approval of the material for purposes of incorporation by reference.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C., (202)

426–1477 from 7:30 a.m. to 3:30 p.m. Copies may also be obtained by contacting that office.

The following comprises a summary of the costs estimated to be associated with the proposed regulations.

The economic impact of the proposed regulations for cranes on OCS facilities is made less burdensome by the fact that a significant number of them are currently in effect under Minerals Management Service (MMS) OCS Order #5, Section 7. This OCS Order, insofar as it requires periodic inspections, recordkeeping, and operational testing to be conducted in accordance with API RP 2D, makes the proposed Coast Guard regulations in these areas no more burdensome than the provisions of the current OCS Order. As the regulatory responsibility for cranes on OCS facilities is being assumed by the Coast Guard in accordance with a Memorandum of Understanding between the Coast Guard and the U.S. Geological Survey (MMS) (46 FR 2199; January 8, 1981), MMS provisions corresponding to Coast Guard provisions would be deleted from the OCS Orders.

Certain proposed regulations, however, could represent new economic burdens on OCS facilities. These include the following proposed requirements:

1. That all newly contracted and installed cranes meet API Spec. 2C performance standards.
2. That alterations to both new and existing cranes be approved as meeting either API Spec. 2C or the original design specifications for the component being altered.
3. That both new and existing cranes be inspected at least once annually by either the crane manufacturer or by one of the recognized crane approval authorities.
4. That crane operators and load riggers/signal persons meet minimum levels of qualification.
5. That a Crane Record Book be maintained.
6. That mobile cranes be rated for tipping by the crane manufacturer.

The possible increased economic burdens resulting from these proposals are discussed, in order, below.

The proposed requirement that all newly contracted and installed cranes meet API Spec. 2C requirements would impact those prospective owners who need or desire to purchase cranes from non-API authorized manufacturers. In this case, the prospective new owners will incur additional expense in obtaining plan approval. This cost can range from $5,000 to $10,000. It should be noted that, in this case, such additional expense would be a one-time occurrence. The proposed regulations provide for duplicate cranes approved in this manner, without incurring the expense of plan approval for each subsequent duplicate crane. Two other factors tend to reduce the potential economic impact of this proposed requirement. The first is the grandfather provision exempting all cranes currently contracted for construction, under construction, or installed on OCS facilities from the requirements of API Spec. 2C. Consequently, this proposed requirement would initially affect only cranes installed after the effective date of these regulations. Second, because MMS has long been recommending the use of API Spec. 2C as a guidelines in purchasing cranes for use offshore and because these standards have been widely adopted by the industry, it is believed that the actual economic impact of this proposed regulation would be relatively small. The Coast Guard has no precise data on the current purchasing practices of the industry, with regard to adoption of API Spec. 2C, and specific information on this economic burden is solicited.

The economic impact of the requirement that alterations to both new and existing cranes be approved is difficult to determine. Approval would be required by one of the recognized crane approval authorities or, in the case of MODUs, by a U.S. registered professional engineer. This expense, while dependent on many variables such as the nature and extent of the alteration, estimated to be less than $5,000 per alteration. The Coast Guard has no current requirements for approval of alterations to cranes on OCS facilities, and it has no information as to the frequency of alterations on existing cranes. Therefore, the Coast Guard encourages comment on the economic impact of this proposed requirement from all knowledgeable sources.

The requirement that both new and existing cranes be inspected annually by the crane manufacturer or by one of the recognized crane approval authorities represents the most burdensome economic impact in the proposed regulations. Based on discussions with currently recognized crane approval authorities, this cost is estimated at $2,000 per crane per year. The actual cost of annual inspection, however, would depend upon the circumstances of each inspection, e.g., location, number, type of crane, and selection of inspection organization. As crane manufacturers may perform certain inspections, in addition to crane approval authorities, it is unknown as to how their inclusion would impact the cost of inspection. Based on current information, however, the $2,000 estimate appears to be neither unreasonably low nor high. If the total number of cranes being regulated under this proposal is estimated at $2,000 then the annual cost of inspection, industry-wide, may be approximately $4 million. Reliable data on these figures is solicited from all knowledgeable sources.

The cost of improving training of crane operators and load riggers/signal persons cannot be accurately estimated by the Coast Guard. Because most companies currently provide some level of training for crane operators, this increase in cost would be measured by the extent to which each company's training program falls short of the minimum levels proposed in these regulations. Specific cost estimates are solicited.

Because recordkeeping costs are already incurred by industry through the mandatory application of API RP 2D under OCS Order #5, the recordkeeping required in these proposed regulations should not represent a significant increase in cost. While the Coast Guard cannot identify any significant economic burdens over and above current recordkeeping costs, comments are solicited on this subject.

The Coast Guard currently has no requirement in place to rate mobile cranes against tipping. Therefore, the cost associated with obtaining such a rating from the crane manufacturer is unknown. It is known, however, that mobile cranes comprise a very small percentage of the cranes subject to these requirements. Cost estimates of obtaining the proposed rating are solicited from crane manufacturers.

For cranes on deepwater ports, the above discussion of the costs associated with cranes on OCS facilities would apply. The proposed requirements for deepwater ports are the same as those for OCS facilities and both carry the same grandfather provisions. It should be noted that, at present, only one crane is affected by these proposals because there is only one deepwater port in operation.

The MODU regulations presently in effect in 46 CFR Parts 107, 108, and 109 were evaluated prior to their publication on December 4, 1978. Those requirements include periodic inspection, annual inspection, recordkeeping, load testing, operational testing, design and equipment standards, approval of alterations, and the requirement to maintain a crane record book. The only new costs

imposed would result from the following proposed requirements:

1. To have alterations to cranes approved by a recognized crane approval authority.
2. To rate mobile cranes.
3. To train crane operators and load riggers/signal persons.

Under the current MODU regulations, crane owners have the option to seek approval of alterations from the Coast Guard, as well as from recognized crane approval authorities. Under these proposed regulations the option to use the Coast Guard would be eliminated to align this provision with the one for cranes on OCS facilities. In this category, the discussion above with respect to the cost of approving alterations to cranes on OCS facilities applies.

Similarly, the discussion above with respect to the rating of mobile cranes on OCS facilities and with training of crane operators and load riggers/signal persons applies to cranes on MODUs as well. Comments regarding the perceived economic impact of these proposals are solicited.

It should be noted that some reductions in costs are apparent with respect to cranes on MODUs. For example, under the current § 107.259, all inspections and tests conducted under Section 3 of API RP 2D must be witnessed and/or conducted by the Coast Guard or one of the crane certifying authorities. Under the proposed regulations, only the annual inspection would require attendance by one of these organizations. Also, where current regulations under § 107.260 require load testing upon installation, major repair, and every 48 months, the proposed regulations would require the load test upon initial installation only. Thereafter, crane owners would have the option of conducting non-destructive testing instead of a load test. Because this option is new, no information is available on whether or not this represents a possible savings. Cost estimates comparing the average load test costs versus those which might accrue for non-destructive testing are solicited. Finally, while current regulations under §§ 107.309 and 107.317 require plan approval of each crane regardless of whether or not the crane bears an API nameplate, certain cost savings would be realized from the proposed change allowing for the elimination of plan approval for those cranes bearing API nameplates and for those cranes certified to be duplicates of previously approved cranes.

The benefits resulting from these proposals would arise from the application of industry developed standards and the new requirements for operator and load rigger/signal person qualification. For MODUs, these proposals would mean a possible cost reduction in the approval of cranes by addressing API nameplates and duplicate cranes, by providing an alternative to load testing, and by reducing the need to have certain inspections performed by outside crane approval authorities. The number of injuries or fatalities which would be prevented by implementing these proposed regulations cannot be estimated precisely. Coast Guard figures indicate that, on the average, one person per year is fatally injured as a result of a crane accident. Minerals Management Service figures place that number at more than three fatalities per year (See "Risk Analysis of Crane Accidents, Gulf of Mexico OCS Region," U.S. Department of Interior OCS Report #MMS 84-0056 (1984)). The common thread running through both Coast Guard and Minerals Management Service accident surveys is that crane accidents occur when the loaders/signal persons follow unsafe procedures, when the crane operator makes a mistake, or when the crane itself suffers a structural failure. By addressing all three of these root causes of accidents, it is expected that one to three fatalities and approximately 35 serious injuries will be prevented annually, offsetting the relatively low per-unit cost of implementing these proposed regulations.

The Coast Guard believes that the net benefits of these proposed regulations will outweigh the net costs. The total economic impact of the proposed amendments to Titles 33 and 46 is conservatively estimated to be $4.5 million annually. This is based upon the maximum annual inspection cost of approximately $2,000 per crane for 2,000 cranes and the costs associated with recordkeeping requirements. Annual inspection costs would be the greatest costs of this proposal and could vary from $500 to $2,000 per crane, depending on the type of crane involved, the number of cranes inspected on the unit at that time, the travel costs of the inspector, and other factors. Because we have no basis for arbitrarily averaging these costs, the Coast Guard has assumed the high end cost of $2,000 per crane for the purpose of these estimations. Specific cost estimates are solicited from all interested and knowledgeable parties. As a result of these comments, the regulatory evaluation will be revised accordingly. These rules would not affect state or local government and would have a negligible effect on costs to consumers. Costs to crane manufacturers are not known.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 USC 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These regulations would affect owners of cranes on, and persons in charge of, OCS facilities, MODUs, and deepwater ports. As the cranes covered by this proposal are, for the most part, permanently mounted on the unit, they are usually owned by the owner of the units. Because of the extremely high costs of these units, their owners tend to be major corporations or subsidiaries of major corporations.

The effect of the proposed regulations on persons in charge are of a supervisory nature and do not create a significant economic impact.

Crane manufacturers would be affected because only cranes meeting API performance standards would be desirable for purchase by offshore users. This may require certain manufacturers to redesign their cranes in order to remain competitive in the offshore market. The Coast Guard believes the effect on manufacturers would not be substantial because most cranes currently being purchased for offshore use already meet API standards.

For the above reasons, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you feel that your business may qualify as a small entity and that the proposed rules would have a significant economic impact on the business, please notify the Coast Guard (see **ADDRESSES**) and explain why you feel your business qualifies and in what way and to what degree the proposed regulations would economically affect your business.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following sections: §§ 143.405, 143.407, 143.409, 143.411, 143.413, 143.415, 143.417, 143.419, 143.421, 143.423, 143.425, and 149.219 of Title 33 and §§ 107.116, 107.258, 107.259, 107.260, 107.305, 108.603, 108.604, 108.605, 108.607, 108.609, 109.437, 109.439, 109.521, and 109.527 of Title 46.

They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

Environmental Assessment

The Coast Gurad has considered the environmental impact of the regulations and concluded that preparations of an environmental impact statement is not necessary. An environmental assessment with a finding of no significant impact has been prepared and is on file in the rulemaking docket.

List of Subjects

33 CFR Parts 140 and 143

Continental shelf, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 149

Deepwater ports, Navigation, Oil imports, Reporting and recordkeeping requirements.

46 CFR Part 107

Continental shelf, Marine safety, Marine resources, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Continental shelf, Fire prevention, Marine safety, Marine resources, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 109

Continental shelf, Marine safety, Marine resources, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, Parts 140 and 143, Subchapter N, Chapter I of Title 33; Part 149, Subchapter NN, Chapter I of Tile 33; and Parts 107, 108, and 109, Subchpater I–A, Chapter I of Tile 46 of the Code of Federal Regulations are proposed to be amended as follows:

TITLE 33—[AMENDED]

CHAPTER I [AMENDED]

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 140—GENERAL

1. The authority citation for Part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46(z).

2. By adding alphabetically new entries to paragraph (b) of § 140.7 to read as follows:

§ 140.7 Incorporated by reference.

* * * * *

(b) The materials approved for incorporation by reference in this subchapter are:

* * * * *

American Petroleum Institute (API), Production Department, 211 N. Ervay, Suite 1700, Dallas, TX 75201

API RP 2D—Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 1984.

API Spec. 2C—Specification for Offshore Cranes, Third Edition, March 1983.

* * * * *

3. By adding in alphabetical order in § 140.10 a definition for the term "crane", to read as follows:

§ 140.10 Definitions

* * * * *

"Crane" means a powered machine, either fixed or mobile, designed primarily to raise, lower, and shift loads.

* * * * *

PART 143—DESIGN AND EQUIPMENT

4. The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); 49 CFR 1.46(z).

5. By adding a new Subpart E to read as follows:

Subpart E—Cranes

Sec.

Subpart E—Cranes

§ 143.401 Purpose.

This subpart prescribes requirements for design, marking, approval, inspection, testing, operation, maintenance, operator designation, recordkeeping, and other matters relating to cranes on OCS facilities.

§ 143.403 Applicability

This subpart applies to all cranes on OCS facilities other than—

(a) Cranes on mobile offshore drilling units; and

(b) Auxiliary hoisting mechanisms, such as drawworks, blowout preventer gantry cranes, diving bell hoists, and air hoists, which function as part of an industrial system.

§ 143.404 Application of material incorporated by reference.

(a) All of the provisions in the material incorporated by reference under § 140.7 of this chapter which are referred to in this subpart are mandatory, regardless of the use in the incorporated material of "should" or other discretionary terminology. Necessary deviations from the incorporated provisions, depending upon the circumstances of each case, may be permitted in accordance with § 143.405.

(b) Provisions in the material incorporated by reference which are referred to in this subpart apply to all cranes under tis subpart, not just pedestal-mounted revolving cranes.

§ 143.405 Authorization to deviate.

(a) The Officer in Charge, Marine Inspection (OCMI), of the Marine Inspeciton Zone in which the OCS facility is located may, upon request, authorize deviations from provisions of this subpart or of the material incorporated by reference under § 140.7 of this chapter.

(b) A request for authorization to deviate must be in writing, state the need for the deviation, and describe the proposed alternative.

(c) If the OCMI finds that the requested alternative provides a level of safety generally equivalent to or greater than that provided under this subpart, the OCMI issues to the requesting party a letter evidencing the authorization.

(d) Letters of authorization to deviate must be maintained in accordance with § 143.425.

§ 143.406 Design and performance standards.

Except for cranes which were contracted for construction, under construction, or installed on an OCS facility before [the effective date of final regulations], the owner of each crane shall ensure that the crane—

(a) Conforms to the performance standards in American Petroleum Institute Specification for Offshore Cranes (API Spec. 2C);

(b) Has control instruments which are illuminated by built in lighting or interior cab lighting;

(c) Does not have fuel tank fills and overflows that run onto engine exhausts;

(d) Has no gasoline engines; and

(e) Has a functional load indicating device.

§ 143.407 Evidence of conformance to standards.

(a) As evidence of conformance to the standards in API Spec. 2C, each crane, other than one exempted under § 143.406, must—

(1) Have a nameplate as specified under Section 15.1 of API Spec. 2C containing all of the information called for on the nameplate illustrated in that section;

(2) Be approved under § 143.409; or

(3) Be certified by the manufacturer to be a duplicate of a crane previously approved under § 143.409.

(b) If the crane is a duplicate of one already approved under § 143.409, the following documents must be maintained in accordance with § 143.425:

(1) A copy of the certificate of approval issued for the previously approved crane.

(2) A statement from the crane's manufacturer certifying that the crane is a duplicate of the crane described in the certificate of approval under paragraph (b)(1) of this section.

§ 143.409 Crane approval.

(a) Approval of a crane as conforming to the standards in API Spec. 2C, as provided in § 143.407(a)(2), must be obtained from one of the following crane approval authorities:

(1) American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652, or other similar classification society accepted by the Commandant.

(2) International Cargo Gear Bureau, Inc. (ICGB), 17 Battery Place, New York, NY 10004.

(b) Requests for approval must be submitted in writing and contain the following items which relate to the crane:

(1) Stress and arrangement diagrams, bills of materials, and supporting calculations for all critical components as the term "critical component" is defined in Appendix B to API Spec. 2C.

(2) Drawings of the means provided to stop motion and set brakes during a power failure.

(c) If, upon review of the items submitted, the approval authority determines that the crane conforms to the standards in API Spec. 2C and the requirements of § 143.406, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(d) Certificates of approval must be maintained in accordance with § 143.425.

§ 143.411 Alteration of cranes and approval of alterations.

(a) Except as provided in paragraph (b) of this section, any alteration to a crane on or after [the effective date of final regulations] must conform to the standards in API Spec. 2C, applicable to the altered component, before the crane is again put into operation on an OCS facility. "Alteration", under this section, does not include replacement of a component with one of like design and materials.

(b) For cranes contracted for construction, under construction, or located on a unit before [the effective date of final regulations], any alteration to the crane on or after that date must conform to the standards in API Spec. 2C, or to the original design standards, applicable to the altered component, before the crane is again put into operation on an OCS facility.

(c) Approval of alterations as conforming to the requirements of this section must be obtained from one of the crane approval authorities listed in § 143.409(a).

(d) Requests for approval must be submitted in writing and need contain only the items listed in § 143.409(b) which relate to the component altered.

(e) If, upon review of the items submitted, the approval authority determines that the alteration conforms to the requirements of this section, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(f) Certificates of approval must be maintained in accordance with § 143.425.

§ 143.413 Mobile crane rating.

(a) Except for cranes exempted under § 143.406, mobile cranes must be rated so that, with the crane in the least stable horizontal position with regard to tipping, the crane does not tip when a load equal to 1.5 times the rated load is applied along the hoist line. This requirement is in addition to the requirement that the crane conform to the standards in API Spec. 2C.

(b) The owner of each mobile crane under this section shall obtain a written statement by the crane's manufacturer certifying that the crane was rated in accordance with paragraph (A) of this section. The statement must be maintained in accordance with § 143.425.

§ 143.415 Inspection.

(a) The person in charge of each OCS facility shall ensure that, for each crane on the OCS facility, the items listed in Sections 3.1.2, 3.1.3, 3.1.5a, 3.4, and 3.5 and Appendix B of American Petroleum Institute Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D) are inspected at intervals specified in those sections. These inspections must be conducted by a "qualified inspector" as the term is defined in Section 1.3 of API RP 2D; except that the inspector must be so designated by the person in charge.

(b) The person in charge shall ensure that, for each crane on the OCS facility, the items listed in Section 3.1.4 of API RP 2D are inspected upon initial installation and at intervals not exceeding 12 months by an inspector from the crane's manufacturer or from one of the crane approval authorities listed in § 143.409. The inspector must be a "qualified inspector" as defined in Section 1.3 of API RP 2D.

(c) Upon request by the inspector, the person in charge shall provide the inspector with the crane record book and other documents under §§ 143.423 and 143.425 for the crane being inspected.

(d) Before the crane is returned to use on an OCS facility, each deficiency which constitutes a hazard must be—

(1) Corrected; and

(2) Reinspected by a qualified inspector of the organization which noted the deficiency.

(e) A record of each monthly, quarterly, and annual inspection conducted under this section must be maintained in accordance with § 143.423. Daily inspections need not be logged.

§ 143.417 Operational tests.

(a) The person in charge of each OCS facility shall ensure that each crane on the facility is operationally tested in accordance with Section 3.2.1 of API RP 2D.

(b) The tests must be performed by a "qualified inspector" as the term is

defined in Section 1.3 of API RP 2D, except that the inspector must be so designated by the person in charge or by the crane's manufacturer.

(c) The results of all operational tests must be recorded in the crane record book in accordance with § 143.423.

§ 143.419 Operation and maintenance.

(a) The person in charge of the OCS facility shall ensure that each crane on the facility is operated and maintained in accordance with Sections 2, 3.3, and 3.4 of API RP 2D, except as otherwise provided in this subpart.

(b) A record of preventive maintenance must be maintained for two years after the maintenance was performed in accordance with Section 3.3.1a of API RP 2D and § 143.425.

§ 143.421 Crane operator designation.

(a) The person in charge of each OCS facility shall ensure that each crane on the facility is operated only by the folowing persons:

(1) Qualified crane operators designated under this section to operate the crane.

(2) Trainees under the supervision of a qualified crane operator.

(3) Qualified inspectors while conducting inspections or tests under this subpart.

(b) For each crane on the OCS facility, the person in charge of the facility designates as qualified crane operators those persons who, by reason of experience or instruction, are qualified to safely operate the crane. In determining whether a particular person is a qualified crane operator, the person in charge shall consider the recommended qualifications in paragraph (c) of this section.

(c) A person designated as a qualifed crane operator should, at a minimum—

(1) Have been trained in the recommended practices of crane operation in Sections 2 and 3 and Appendix A of API RP 2D;

(2) Meet the recommendations of API RP 2D concerning the physical condition of crane operators;

(3) Have successfully completed a practical written examination pertaining to the operation of the specific type of crane or cranes that the person operates;

(4) Have successfully conducted a minimum of 40 lifts under the supervision of a qualified crane operator, involving both loading and offloading between an OCS facility and a vessel; and

(5) Be familiar with the following:

(i) API RP 2D.

(ii) Recommendations of the manufacturer of the specific type of crane that the person operates.

(iii) Dynamic loading.

(iv) Use of rated load charts.

(v) General maintenance and inspection procedures and schedules for the specific type of crane that the person operates.

(vi) All restrictions observed on the OCS facility concerning the use of cranes during helicopter operations.

(vii) All crane signals customarily used on the OCS facility.

(viii) The effects of the environment, such as wind and sea states, on the operation of offshore cranes.

(ix) The use of manufacturer prescribed outriggers or tie-downs on mobile cranes, if applicable.

(x) The regulations relating to offshore cranes in this subpart concerning inspection, testing, operation, operator designation, maintenance, and recordkeeping.

(d) The person in charge shall enter the name of each person designated under paragraph (a)(1) of this section to operate a particular crane in the crane record book for that crane before allowing that person to operate the crane.

§ 143.422 Crane load riggers and signal persons.

(a) The person in charge of each OCS facility shall ensure that each individual acting in the capacity of load rigger and/or signal person meets the following minimum qualifications:

(1) Be a "qualified person" as that term is defined in Section 1.2 of API RP 2D; or

(2) Be a trainee under the direct supervision of a qualified crane load rigger or signal person.

(b) In determining whether a particular person is a qualified crane load rigger or signal person, the person in charge shall consider the minimum recommended skill levels in paragraph (c) of this section.

(c) A person designated as a qualified load rigger or signal person should, at a minimum—

(1) Be proficient in the use of Standard Hand Signals in Figure 2-1 of API RP 2D;

(2) Be aware of the safe operation practices and the restrictions specified in Section 2 of API RP 2D; and

(3) Have successfully conducted a minimum of 20 lifts under the direct supervision of a qualified load rigger or signal person.

§ 143.423 Crane record book.

(a) The person in charge of each OCS facility shall ensure that a crane record book is maintained for each crane on the facility. Information on more than one crane may be combined into a single volume as long as it is clear which crane is being addressed. The crane record book must be kept on the OCS facility or, if the facility is unmanned, either on the facility or on the controlling manned facility in the field area. The person in charge shall make the crane record book available upon request to inspectors under § 143.415(c) and to Coast Guard inspectors.

(b) The crane record book must contain—

(1) Descriptive information which identifies the crane, including the following:

(i) Name of the crane's manufacturer.

(ii) Manufacturer's address.

(iii) Manufacturer's model number.

(iv) Manufacturer's serial number.

(v) Design service temperature.

(2) The name of each qualified crane operator designated under § 143.421 as qualified to operate the crane;

(3) The chart of the rated load for each line reeving configuration at operating radii increments not exceeding five feet or at the corresponding boom angles;

(4) Date and results of each monthly, quarterly, and annual inspection under § 143.415, the name of the person conducting the inspection, and the name of that person's employer or of the organization which that person represents;

(5) Date and results of each operational test under § 143.417, the name of the person performing the test, and the name of the organization which that person represents;

(6) Date of each replacement or renewal of wire rope, hooks, and other load components;

(7) Date and description of each failure of the crane or any component or safety feature of the crane; and

(8) Date and description of each repair or alteration of the crane.

§ 143.425 Certificates and other documents.

(a) The owner of each crane shall ensure that the following documents relating to the crane are maintained as part of, or at the same location as, the crane record book:

(1) Letters of authorization to deviate under § 143.405.

(2) Certificates of approval issued under §§ 143.409 and 143.411.

(3) Written statements by crane manufacturers and other documents described in §§ 143.407(b) and 143.413(b).

(4) Maintenance records under § 143.419(b).

(b) The person in charge shall make the documents under this section available upon request to inspectors under § 143.415(c) or to Coast Guard inspectors.

SUBCHAPTER NN—DEEPWATER PORTS

PART 149—DESIGN, CONSTRUCTION, AND EQUIPMENT

6. The authority citation for Part 149 is revised to read as follows:

Authority: 33 U.S.C. 1504(a), (b); 49 CFR 1.46(s).

7. By adding new § 149.219 to read as follows:

§ 149.219 Cranes.

(a) This section applies to all cranes and crane operations on each deepwater port, except to auxiliary hoisting mechanisms, such as diving bell or air hoists, which function as part of an industrial system.

(b) All cranes and crane operations are subject to the same requirements, including those relating to design, marking, certification, inspection, testing, operation, maintenance, operator designation, and recordkeeping, as are prescribed for cranes and crane operations on Outer Continental Shelf facilities under Subpart E of Part 143 of this chapter.

(c) For the purposes of this section, reference in Subpart E of Part 143 of this chapter to—

(1) "OCS facility" means "deepwater port" as defined in § 148.3 of this chapter; and

(2) "Person in charge" means the Port Superintendent of a deepwater port.

Title 46—[Amended]

CHAPTER I—[AMENDED]

SUBCHAPTER I-A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

8. The authority citation for Part 107 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); § 107.05 also issued under 44 U.S.C. 3507, 49 CFR 1.45; § 107.258 also issued under 46 U.S.C. 3316; 49 CFR 1.46(b), (n)(6), (z).

9. By adding in alphabetical order in § 107.111 a definition for the term "crane" to read as follows:

§ 107.111 Definitions.

As used in this subchapter:

* * * * *

"Crane" means a powered machine, either fixed or mobile, designed primarily to raise, lower, and shift loads; but the term does not include auxiliary hoisting mechanisms, such as drawworks, blowout preventer gantry cranes, diving bell hoists, and air hoists, which function as part of an industrial system.

* * * * *

10. By revising § 107.115 to read as follows:

§ 107.115 Incorporation by reference.

(a) In this subchapter, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. Unless specifically limited, modified, or replaced by the regulations, these standards and specifications requirements specifically referred to in this subchapter are the governing requirements for the subject matters covered and are mandatory, regardless of the use in the incorporated material of "should" or other discretionary terminology.

(b) These materials are incorporated into this subchapter under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this subchapter where the material is incorporated. To enforce an edition other than one listed in this subchapter, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408 and at U.S. Coast Guard Headquarters, Room 1404, 2100 Second Street, SW., Washington, D.C. 20593. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) These materials are available from the appropriate organization at the following address:

(1) American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, New Jersey 07652.

(2) American National Standards Institute (ANSI), American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.

(3) American Petroleum Institute (API), Production Department, 211 North Ervay, Suite 1700, Dallas, Texas 75201.

(4) International Cargo Gear Bureau (ICGB), 17 Battery Place, New York, New York 10004.

(5) National Fire Protection Association (NFPA), 470 Atlantic Avenue, Boston, Massachusetts 02210.

(6) Underwriters Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062.

11. By adding a new § 107.116 to read as follows:

§ 107.116 Authorization to deviate for requirements for cranes.

(a) The Officer in Charge, Marine Inspection (OCMI), of the Marine Inspection Zone in which the unit is located may, upon request, authorize deviations from provisions of this subchapter or of the material incorporated by reference under § 107.115, which relate to cranes.

(b) A request for authorization to deviate must be in writing, state the need for the deviation, and describe the proposed alternative.

(c) If the OCMI finds that the requested alternative provides a level of safety generally equivalent to or greater than that provided under this subchapter, the OCMI issues to the requesting party a letter evidencing the authorization.

(d) Letters of authorization to deviate must be maintained in accordance with § 109.439 of this chapter.

12. By revising paragraph (o) of § 107.231 to read as follows:

§ 107.231 Inspection for certification.

* * * * *

(o) Each crane is inspected and tested in accordance with §§ 107.258 and 107.259.

* * * * *

13. By revising §§ 107.258, 107.259, and 107.260 to read as follows:

§ 107.258 Crane inspection.

(a) The person in charge of each unit shall ensure that, for each crane on the unit, the items listed in Sections 3.1.2, 3.1.3, 3.1.5a, 3.4., and 3.5 and Appendix B of American Petroleum Institute Recommended Practice for Operation and Maintenance of Offshore Cranes, API RP 2D, Second Edition, June 1984, are inspected at the intervals described in those sections. These inspections must be conducted by a "qualified inspector" as the term is defined in Section 1.3 of API RP 2D; except that the inspector must be so designated by the person in charge.

(b) The person in charge shall ensure that, for each crane on the unit, the items listed in Sections 3.1.4 of API RP 2D are inspected upon initial installation and at intervals not exceeding 12 months by an inspector from the Coast Guard or from one of the crane approval

authorities listed in § 108.604(a) of this chapter. Each inspector from a crane approval authority must be a "qualified inspector" as defined in Section 1.3 of API RP 2D.

(c) Upon request by an inspector under paragraphs (a) and (b) of this section, the person in charge shall provide the inspector with the crane record book and other documents under §§ 109.437 and 109.439 of this chapter for the crane being inspected.

(d) Before the crane is returned to use on a unit, each deficiency which constitutes a hazard must be—

(1) Corrected; and

(2) Reinspected by an inspector of the organization which noted the deficiency.

(e) A record of each monthly, quarterly, and annual inspection conducted under this section must be maintained in accordance with § 109.437 of this chapter. Daily inspections need not be logged.

§ 107.259 Crane operational tests.

(a) The person in charge of each unit shall ensure that each crane on the unit is operationally tested in accordance with Section 3.2.1 of API RP 2D.

(b) The tests must be performed by a "qualified inspector" as the term is defined in Section 1.3 of API RP 2D, except that the inspector must be so designated by the person in charge or by the crane's manufacturer.

(c) The results of all operational tests must be recorded in the crane record book in accordance with § 109.437 of this chapter

§ 107.260 Crane load tests.

(a) Load tests under this section consist of both proof loading the crane and examining it for defects.

(b) When performed under this section, proof loading and non-destructive testing must be witnessed by, and examinations conducted by, an inspector of the Coast Guard or of a crane approval authority listed in § 108.604(a) of this chapter.

(c) The person in charge of each unit shall ensure that each crane on the unit is load tested in accordance with this section—

(1) when the crane is installed;

(2) Every four years, except when non-destructive testing of all critical components, as defined in Appendix B to the American Petroleum Institute Specification for Offshore Cranes, API Spec. 2C, Third Edition, March 1983, is conducted in accordance with paragraph (d) of this section; and

(3) Except as provided for under paragraph (e) of this section, after any critical component, as defined in Appendix B to API Spec. 2C, is altered, repaired, or replaced and before the crane is returned to use on the unit.

(d) Non-destructive testing instead of proof loading may be conducted every four years on all critical components. The test procedure must be acceptable to the inspector under paragraph (d) of this section who witnesses the testing.

(e) For components under paragraph (c)(3) of this section, non-destructive testing may be conducted on the components involved, instead of proof loading the crane.

(f) Except for the proof loads specified for certain cranes under paragraph (g) of this section, each crane, when load tested under this section, must be tested as normally rigged with the proof load listed in Table 107.260. Proof must be suspended from the main hoist line at both the maximum and minimum boom angles normally used in material transfers over the side of the unit. If the load test is being performed as a result of component repair, alteration, or replacement under paragraph (c)(3) of this section, the boom angle to be used must be the one which places the greatest stress on the component repaired, altered, or replaced. The weight of the hook, hook blocks, slings, and other rigging, with the exception of the hoist line, is considered part of the proof load. The static rated load of a crane varies with boom angle and radius; thus, the proof load for each lift must be determined using the crane's rated load chart and the boom angle and radius of the lift.

TABLE 107.260

Static rated load of assembled gear (ton = 2240 pounds)	Proof load
Less than or equal to 20 tons	25 pct. in excess.
Greater than 20 tons but less than or equal to 50 tons..	5 tons in excess.
Greater than 50 tons	10 pct. in excess.

(g) For cranes with relief valves or current limiting devices which prevent the crane from lifting the proof loads specified in paragraph (f) of this section, the greatest proof load that can be lifted in excess of the static rated load without bypassing or adjusting the valves or devices must be used.

(h) Upon completion of the proof loading portion of the load test, all component parts of the crane must be given a thorough visual examination, supplemented as necessary by other means, such as a hammer test or testing with electronic or ultrasonic devices, to check for parts which are damaged, deformed, or otherwise rendered unsafe for further use. Dismantling or disassembling of the crane may be required to the extent necessary to conduct this examination. If parts are found defective, they must be replaced and the crane retested before being returned to use on a unit.

(i) The crane's owner must arrange for all equipment, test instruments, and personnel necessary for conducting the proof loading and non-destructive testing required by this section.

(j) A record of each load test and each non-destructive test under this section must be maintained in the crane record book in accordance with § 109.437 of this chapter.

14. By revising paragraph (o) of § 107.305 to read as follows:

§ 107.305 Plans and information.

* * * * *

(o) Arrangement of cranes and detailed drawings of crane foundations and substructures with calculations showing that these foundations and substructures are adequate for their intended purpose.

* * * * *

§ 107.309 [Removed]

15. By removing § 107.209, *Crane plans and information.*

16. By revising the introductory text and paragraph (c) and removing the note to paragraph (c) of § 107.317 to read as follows:

§ 107.317 Addresses for submittal of plans, specifications, and calculations.

The copies of each plan, drawing, specification, and calculation required under §§ 107.305, 108.605, and 108.607 of this chapter must be submitted to one of the following, as applicable:

* * * * *

(c) The American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652, or other similar classification society accepted by the Commandant.

* * * * *

PART 108—DESIGN AND EQUIPMENT

17. The authority citation for Part 108 is revised to read as follows and all section authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d)(1), 1347(c) 1356(a)(2); 49 CFR 1.46(b), (n)(6), (z).

18. By revising § 108.601 to read as follows:

§ 108.601 Crane design and performance standards.

The owner of each crane shall ensure that the crane—

(a) Conforms to the performance standards in American Petroleum Institute Specification for Offshore Cranes, API Spec. 2C, Third Edition, March 1983;

(b) Has control instruments which are illuminated by built in lighting or interior cab lighting;

(c) Does not have fuel tank fills and overflows that run onto engine exhausts;

(d) Has no gasoline engines;

(e) Has a functional load indicating device; and

(f) If the crane is located in or can enter hazardous areas, as defined in § 111.105–33 of this chapter, the crane must meet the requirements in Subpart 111.107 of Part 107 of this chapter applicable to the crane's electrical equipment.

19. By adding new §§ 108.603, 108.604, 108.605, 108.607, and 108.609, under the centerheading "cranes", to read as follows:

§ 108.603 Evidence of conformance to standards.

(a) As evidence of conformance to the standards in API Spec. 2C, each crane, other than one exempted under § 108.601(c), must—

(1) Have a nameplate as specified under Section 15.1 of API Spec. 2C containing all of the information called for on the nameplate illustrated in that section;

(2) Be approved under § 108.604; or

(3) Be certified by the manufacturer to be a duplicate of a crane previously approved under § 108.604.

(b) If the crane is a duplicate of one already approved under § 108.604, the following documents must be maintained in accordance with § 109.439 of this chapter:

(1) A copy of the certificate of approval issued for the previously approved crane.

(2) A statement from the crane's manufacturer certifying that the crane is a duplicate of the crane described in the certificate of approval under paragraph (b)(1) of this section.

§ 108.604 Crane approval.

(a) Approval of a crane as conforming to the standards in API Spec. 2C, as provided in § 108.603(a)(2), must be obtained from one of the following crane approval authorities:

(1) American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652, or other similar classification society accepted by the Commandant.

(2) International Cargo Gear Bureau, Inc. (ICGB), 17 Battery Place, New York, NY 10004.

(b) Requests for approval must be submitted in writing and contain the following items which relate to the crane:

(1) Stress and arrangement diagrams, bills of materials, and supporting calculations for all critical components as the term "critical component" is defined in Appendix B of API Spec. 2C.

(2) Drawings of the means provided to stop motion and set brakes during a power failure.

(c) If, upon review of the items submitted, the approval authority determines that the crane conforms to the standards in API Spec. 2C and the requirements of § 108.601, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(d) Certificates of approval must be maintained in accordance with § 109.439 of this chapter.

§ 108.605 Additional equipment and installation requirements for cranes.

(a) In addition to the requirements in § 108.601, the owner of each crane shall ensure that the crane conforms to the requirements in this section.

(b) Electrical systems must meet Subpart 111.01 and §§ 111.05–3, 111.05–7, 111.05–11, 111.50–3(b), 111.50–3(g), and 111.50–3(h) of this chapter.

(c) Hydraulic or pneumatic power and control systems considered fail-safe must meet § 58.30–50 of this chapter. Systems not considered fail-safe must meet §§ 58.30–5, 58.30–10, 58.30–15, 58.30–17, 58.30–20, 58.30–25, 58.30–30, 58.30–35, and 58.30–40 of this chapter. A system is considered fail-safe if a component failure will result in a slow and controlled release (or, for personnel handling cranes, where a component failure will result in a slow and controlled stop) of the load so as not to endanger personnel.

(d) Supporting structures and stiffeners under and adjacent to cranes must be adequate for the loads and allowable unit stresses contained in Section 3 of API Spec. 2C.

(e) As evidence of conformance to the requirements in paragraphs (b), (c), and (d) of this section, the following plans and specifications must be approved by one of the crane approval authorities listed in § 108.604(a), or certified by a U.S. registered professional engineer, as conforming to the requirements of this section:

(1) One line diagrams of the electrical power systems showing overcurrent protection.

(2) Schematic diagrams of the electrical control systems with a written description of the sequence of events.

(3) Diagrams of the hydraulic or pneumatic power and control systems, as applicable under paragraph (b) of this section.

(4) Details of crane supporting structures.

(5) General arrangement diagram showing crane installation on the unit.

(f) The standards used (e.g., National Electrical Code, Classification Society Rules, etc.) must be indicated on the plans and specifications submitted under paragraph (e) of this section.

(g) Each diagram and analysis must be marked to indicate approval or certification.

(h) If the plans and specifications are certified by a U.S. rgistered professional engineer, three certified copies of each plan and specification must be submitted to the Coast Guard at the appropriate address under § 107.317 of this chapter.

(i) One approved or certified copy of each set of plans and specifications submitted under paragraph (e) of this section must be maintained on the unit in accordance with § 109.429 of this chapter.

§ 108.607 Alteration of cranes and approval of alterations.

(a) Any alteration to a crane must meet the requirements of §§ 108.601 and 108.605, applicable to the altered component, before the crane is again put into operation on a unit.

(b) Plans and specifications of the alteration must be—

(1) Approved as meeting the requirements of paragraph (a) of this section by one of the crane approval authorities listed under § 108.604(a); or

(2) Be certified as meeting the requirements of paragraph (a) of this section by a U.S. registered professional engineer, in which case the certification must appear on all diagrams and analyses and be submitted under § 107.317 of this chapter.

(c) Requests for approval must be submitted in writing and need contain only the items listed in §§ 108.604(b) or 108.605(e), as applicable.

(d) If, upon review of the items submitted, the approval authority determines that the alteration conforms to the requirements of this section, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(e) Certificates of approval must be maintained in accordance with § 109.439 of this chapter.

§ 108.609 Mobile crane rating.

(a) Except for mobile cranes which were contracted for construction, under construction, or located on a unit before [the effective date of final regulations], mobile cranes must be rated so that, with the crane in the least stable horizontal position with regard to

tipping, the crane does not tip when a load equal to 1.5 times the rated load is applied along the hoist line. This requirement is in addition to the specifications in API Spec. 2C.

(b) The owner of each mobile crane under this section shall obtain a written statement by the crane's manufacturer certifying that the crane was rated in accordance with paragraph (a) of this section. The statement must be maintained in accordance with § 109.439 of this chapter.

PART 109—OPERATIONS

20. The authority citation for Part 109 is revised to read as follows and all section authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d)(1), 1347(c); §§ 109.411 and 109.413 also issued under 46 U.S.C. 6101; § 109.431 also issued under 46 U.S.C. 10104; 49 CFR 1.46 (b), (n)(6), (z).

21. By revising §§ 109.437 and 109.439 to read as follows:

§ 109.437 Crane record book.

(a) The person in charge of each unit shall ensure that a crane record book, for each crane on the unit, is kept on board the unit. Information on more than one crane may be combined into a single volume as long as it is clear which crane is being addressed. The person in charge shall make the crane record book available upon request to inspectors under § 107.258(c) of this chapter and to Coast Guard inspectors.

(b) The crane record book must contain—

(1) Descriptive information which identifies the crane, including the following:

(i) Name of the crane's manufacturer.

(ii) Manufacturer's address.

(iii) Manufacturer's model number.

(iv) Manufacturer's serial number.

(v) Design service temperature.

(2) The name of each qualified crane operator designated under § 109.527 as qualified to operate the crane;

(3) The chart of the rated load for each line reeving configuration at operating radii increments not exceeding five feet or at the corresponding boom angles;

(4) Date and results of each monthly, quarterly, and annual inspection under §107.258 of this chapter, the name of the person conducting the inspection, and the name of that person's employer or of the organization which that person represents;

(5) Date and results of each operational test, load test, or non-destructive testing under §§ 107.259 and 107.260 of this chapter, the name of the person witnessing the proof loading on non-destructive testing and conducting the examination or inspection, and the name of the organization which that person represents;

(6) Date of each replacement or renewal of wire rope, hooks, and other load components;

(7) Date and description of each failure of the crane or any component or safety feature of the crane; and

(8) Date and description of each repair or alteration of the crane.

§ 109.439 Crane certificates and other documents.

(a) The owner of each crane shall ensure that the following documents relating to the crane are maintained as part of, or in the same location as, the crane record book:

(1) Letters of authorization to deviate under §107.116 of this chapter.

(2) Certificates of approval issued under §§ 108.604 and 108.607 of this chapter.

(3) Written statements by crane manufacturers and other documents described in §§ 108.603(b) and 108.609(b) of this chapter.

(4) Maintenance records under § 109.521(b).

(5) Plans and specifications under §108.605(i) of this chapter.

(b) The person in charge shall make the documents under this section available upon request to inspectors under §107.258(c) of this chapter and to Coast Guard inspectors.

22. By revising §109.521 as follows:

§ 109.521 Cranes: Operation and maintenance.

(a) The person in charge of the unit shall ensure that each crane on the unit is operated and maintained in accordance with Sections 2, 3.3, and 3.4 of American Petroleum Institute Recommended Practice for Operation and Maintenance of Offshore Cranes, API RP 2D, Second Edition, June 1984, except as provided in this subchapter.

(b) A record of preventive maintenance must be maintained for two years after the maintenance was performed in accordance with Section 3.3.1a of API RP 2D and § 109.439.

§ 109.525 [Removed]

23. By removing §109.525, Cranes Working loads.

24. By revising §109.527 to read as follows:

§109.527 Cranes: Operator designation.

(a) The person in charge of each unit shall ensure that each crane on the unit is operated only by the following persons:

(1) Qualified crane operators designated under this section to operate the crane.

(2) Trainees under the supervision of a qualified crane operator.

(3) Qualified inspectors while conducting inspections or tests under this subchapter.

(b) For each crane on the unit, the person in charge of the unit designates as qualified crane operators those persons who, by reason of experience or instruction, are qualified to safely operate the crane. In determining whether a particular person is a qualified crane operator, the person in charge shall consider the recommended qualifications in paragraph (c) of this section.

(c) A person designated as a qualified crane operator should, at a minimum—

(1) Have been trained in the recommended practices of crane operation in Sections 2 and 3 and Appendix A of API RP 2D;

(2) Meet the recommendations of API RP 2D concerning the physical condition of crane operators;

(3) Have successfully completed a practical written examination pertaining to the operation of the specific type of crane or cranes that the person operates;

(4) Have successfully conducted a minimum of 40 lifts under the supervision of a qualified crane operator, involving both loading and offloading between a unit and a vessel; and

(5) Be familiar with the following:

(i) API RP 2D.

(ii) Recommendations of the manufacturer of the specific type of crane that the person operates.

(iii) Dynamic loading.

(iv) Use of rated load charts.

(v) General maintenance and inspection procedures and schedules for the specific type of crane that the person operates.

(vi) All restrictions observed on the unit concerning the use of cranes during helicopter operations.

(vii) All crane signals customarily used on the unit.

(viii) The effects of the environment, such as wind and sea states, on the operation of offshore cranes.

(ix) The use of manufacturer prescribed outriggers or tie-downs on mobile cranes, if applicable.

(x) The regulations relating to offshore cranes in this subchapter concerning inspection, testing, operation, operator designation, maintenance, and recordkeeping.

(d) The person in charge shall enter the name of each person designated under paragraph (a)(1) of this section to operate a particular crane in the crane record book for that crane before

allowing that person to operate the crane.

25. By adding new § 109.528 as follows:

§ 109.528 Crane load riggers and signal persons.

(a) The person in charge of each unit shall ensure that each individual acting in the capacity of load rigger and/or signal person meets the following minimum qualification:

(1) Be a "qualified person" as that term is defined in Section 1.2 of API RP 2D; or

(2) Be a trainee under the supervision of a qualified crane load rigger or signal person.

(b) In determining whether a particular person is a qualified crane load rigger or signal person, the person in charge shall consider the minimum recommended skill levels in paragraph (c) of this section.

(c) A person designated as a qualified load rigger or signal person should, at a minimum—

(1) Be proficient in the use of Standard Hand Signals in Figure 2–1 of API RP 2D;

(2) Be aware of the safe operation practices and the restrictions specified in Section 2 of API RP 2D; and

(3) Have successfully conducted a minimum of 20 lifts under the supervision of a qualified load rigger or signal person.

Dated: February 10, 1986.

J.W. Kime,

Rear Admiral (Lower Half) U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86–3214 Filed 2–13–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. DCO–A–4–FRL–2943–4]

Air Quality Implementation Plans; State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Florida

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule.

SUMMARY: The EPA gives notice that the proposed approval of the Arnold Cellophane Delayed Compliance Order (DCO) has been withdrawn. On October 9, 1984 (49 FR 39583), EPA proposed approval of a Delayed Compliance Order (DCO) for Arnold Cellophane Corp., located in Miami, Florida. Upon further EPA review of the DCO and the Florida regulations, it was determined that the Order does not meet the Clean Air Act (CAA) section 113(d)(1)(D) requirements, and Agency policy, as stated in Courtney Price's February 12, 1985, memorandum, "Enforcement of VOC Limits Under the CAA." This memo states that DCOs and Consent Decrees must require final compliance consistent with the relevant State Implementation Plan (SIP). This action is taken without prior proposal because it is noncontroversial and EPA anticipates no comments on it.

DATE: The proposed rule was withdrawn on February 14, 1985.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Compliance Branch, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Mark Armentrout, Air Compliance Branch, Region IV, EPA, at 345 Courtland St. NE., Atlanta, Georgia 30365 and phone 404/881–7654 or FTS 257–7654.

SUPPLEMENTARY INFORMATION: The Arnold Cellophane Order allowed final compliance to be determined by averaging VOC emissions across like (paper coating) lines. The paper coating regulation contained in the Florida SIP requires line-by-line compliance. Because the Order is contrary to the SIP, the DCO cannot be approved and is withdrawn. However, Arnold Cellophane has proceeded to attempt compliance on a line-by-line basis using low solvent technology.

For more information on the specifics of the proposed Order, see the proposed rule published on October 9, 1984 (49 FR 39583).

Authority: 42 U.S.C. 7413, 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: January 9, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 86–3278 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 264 and 270

[SW–FRL–2970–4]

Availability and Opportunity To Comment on Technical Guidance for Ground-Water Analysis

AGENCY: Environmental Protection Agency.

ACTION: Availability and opportunity to comment.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is preparing to propose changes to its regulations requiring the analysis of ground water for hazardous constituents at hazardous waste management facilities under the Resource Conservation and Recovery Act (RCRA). The notice also announces that EPA has issued new interim guidance on these requirements. EPA is inviting the public to comment on the technical aspects of the new guidance. EPA will use the comments to refine both the rulemaking proposal and the interim guidance.

DATES: EPA is requesting that comments be submitted by March 17, 1986.

ADDRESS: Comments should be submitted to the RCRA Docket Section (WH–562), Room SE212, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (Attention: Docket No. 14002–68–2).

FOR FURTHER INFORMATION CONTACT: For a copy of the guidance contact the RCRA Hotline, toll-free (800) 424–9346; in Washington, DC 382–3000. For information about the project, contact either the Hotline or Dr. Robert April, Office of Solid Waste, WH–565E, U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382–4654.

SUPPLEMENTARY INFORMATION: In 1982 EPA promulgated regulations under RCRA for the issuance of permits to land-based hazardous waste facilities. (47 FR 32274; July 19, 1982). Regulations codified in 40 CFR Parts 264 and 270 require some owners and operators to analyze ground water for each of the approximately 375 hazardous constituents listed in Appendix VIII to 40 CFR Part 261. Attempts to implement the rules have shown that it is not possible to analyze ground water for all of these constituents. This notice announces the availability of a new interim guidance document presenting the Agency's latest views on the analytical potential of the Appendix VIII constituents, and invites the public to comment on these views. EPA will consider the comments in the context of rulemaking efforts to review the ground-water analysis requirements, and may

also use the comments to revise the new interim guidance. As discussed below in more detail, EPA believes that the changes recommended in the guidance will not reduce environmental protection, since the recommended ground-water monitoring will continue to adequately identify any contamination.

I. Background

EPA promulgated Appendix VIII in 1980 to identify a broad range of chemicals that should be considered for regulation under the RCRA hazardous waste program. (45 FR 33084; May 19, 1980). EPA used the list primarily to assist in identifying substances that should be listed as hazardous wastes. In 1982, however, EPA adopted the same list as an important element in its ground-water protection regulations for land-based hazardous waste facilities. (47 FR 32774; July 26, 1982). Under some circumstances, these rules require owners and operators to analyze ground water for each constituent on the Appendix VIII list.

When it promulgated these rules, EPA acknowledged that it lacked methods for analyzing ground water for nine of the Appendix VIII constituents. (47 FR 32296; July 26, 1982). However, subsequent attempts to implement the regulation ahve shown that analysis would be difficult or impossible for a larger number of constituents. Since it is impossible to analyze for all constituents, facility owners and operators have submitted a variety of analytical schemes purporting to be an "Appendix VIII analysis." Analytical laboratories have provided data they may have felt to be of dubious reliability to try to cover as much of Appendix VIII as conceptually possible. Moreover, analysis for a number of constituents, particularly those lacking standardized test methods, is very difficult and time-consuming.

To respond to these problems, EPA issued a guidance memorandum recommending the use of enforcement discretion. See "Enforcing Ground-Water Monitoring Requirements in RCRA Part B Permit Applications," from Courtney Price and Lee Thomas, August 16, 1984. Also, in 1984 EPA proposed to eliminate from the ground-water analysis requirements 22 Appendix VIII constituents for which it believed analysis was impossible. (47 FR 38786; October 1, 1984).

In the spring of 1985 EPA organized an Agency working group to re-examine the suitability of using Appendix VIII to define ground-water monitoring requirements and to develop a new proposal for regulatory revisions. Based on this group's early efforts, EPA expects to propose to exclude more constituents from the analytical requirements on the basis of the technical limitations of ground-water analysis. EPA will propose changes as soon as possible, but believes that it will take several months. A number of additional months will be required to promulgate final rules.

The working group is also considering broader issues that may affect the number of constituents that should be analyzed routinely at all facilities. Based on this work group, EPA may propose to delete additional constituents. The Agency may also propose to add new constituents to the ground-water monitoring requirements. EPA currently plans to propose and promulgate these additional changes at a later date.

II. New Interim Guidance

In November 1984, Congress comprehensively amended RCRA. One of these new amendments requires EPA to take final action on all permits for land-based hazardous waste facilities by November 1988. Section 3005(c). The 1982 regulations for land-based facilities require some owners or operators to analyze for each Appendix VIII constituent as part of their permit applications. See 40 CFR 270.14(c)(4), (6), (8). This is impossible to do. Also, the number of laboratories capable of testing for each Appendix VIII constituent for which analysis is conceptually possible is limited. Requiring broad Appendix VIII analyses for all facilities required to meet these regulations will slow all permits. Ultimately, EPA will almost certainly miss the final deadline for permitting for some facilities. Moreover, in some cases, cleanup of hazardous releases under the new provisions for "corrective action" would be postponed. EPA's goal is to facilitate environmental protection by issuing permits and implementing corrective action as quickly as possible. Consequently, EPA believes it necessary to provide new interim guidance to expedite permit issuance while it pursues regulatory changes.

The new interim guidance document advises EPA permit writers that they may exercise discretion in requiring Appendix VIII analysis under the waiver authority for permit applications in 40 CFR 270.14(a), where analysis would be impossible or so time-consuming as to interfere with the statutory permit deadline or the timely initiation of corrective action.

The guidance also advises permit writers that, if they grant waivers for any Appendix VIII constituents, they must also write permit conditions that will "reopen" the waivers when EPA completes the first stage of its Appendix VIII rulemaking. If the final rule requires analysis of any constituent that the permit writer had waived, the condition would authorize EPA to modify the permit to require owners and operators to test for those constituents as soon as possible.

The guidance document also contains the Agency's latest recommendations on the analytical potential of each Appendix VIII constituent. These recommendations are the product of an intensive four-day working session held December 10–13, 1985, and attended by experts from EPA and State environmental agencies. These experts concluded that use of the Appendix VIII list for ground-water monitoring poses a number of technical problems. Some Appendix VIII listings are for inorganic chemicals which dissociate into ions in water, while others are chemicals which readily react with water and decompose. Analyzing for these constituents as listed would be impossible. Insisting on analysis would make it impossible for owners and operators ever to complete their permit applications. The guidance recommends waiving analysis for the unstable compounds and analyzing for the most significant ions produced by ionic compounds.

Some Appendix VIII listings are actually large or indeterminant groups of chemicals. Requiring analysis for each member of the group would be time-consuming or impossible. In all such cases, the guidance recommends suitable group members to represent each group. Finally, experience has shown that, for a variety of reasons, some of the Appendix VIII chemicals are not reliably measured by generally applicable analytical methods. Analysis for many of these constituents is conceptually possible, but would require laboratories to perform time-consuming experiments that would produce results only for an individual waste matrix at a single site. Because attempting such analyses could delay the issuance of permits and the initiation of corrective action, the guidance recommends that permit writers exercise discretion, and require such analyses only where the need to try to develop data about one of these constituents outweighs the potential for delay. For example, a facility that produces a compound may have developed a method to analyze for its presence in ground water. Regional Offices might find that this expertise would make analysis feasible within a reasonable time. The experts at the

meeting believe that some of the chemicals listed in the guidance would be present at any site contaminated by any Appendix VIII constituent. Thus, no plume of contamination should escape identification and control and there will be no loss of environmental protection.

The guidance concludes with three lists. The first contains constituents from the Appendix VIII list that EPA believes can generally be analyzed at all sites. The second contains 25 other constituents that appear on the Superfund Hazardous Substances List, but do not appear on the Appendix VIII list. EPA recommends that owners or operators of facilities test for all constituents on these two lists. The final list reviews all of the Appendix VIII constituents and notes for specific constituents the specific analytical difficulties that the group of experts identified.

It is important to emphasize that this guidance does not consider factors such as cost, mobility in ground water, or the nature of wastes at particular sites, and that it applies only to ground-water analyses. Furthermore, it is not intended to impact the use of Appendix VIII for other purposes such as listing hazardous waste or requiring corrective action in other environmental media.

III. Request for Comment

EPA is advising its Regional Offices that they may use these recommendations on technical problems to guide the exercise of discretion in applying the permit application requirements. EPA also intends to use these recommendations in the development of its new regulatory proposal. To increase the value of these recommendations, and to expedite the new rule, EPA is announcing that the guidance is available and is requesting comment on the technical issues involved. EPA will consider comments on the technical issues as it develops its new regulatory proposal. EPA may also respond to comments by revising the interim guidance. Comments should be sent to the address given above. Since EPA is trying to publish the proposal as soon as possible, EPA will be able to give most attention to comments submitted in the next 30 days.

Dated: February 7, 1986.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-3280 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 440

[OW-FRL-2970-3]

Ore Mining and Dressing Point Source Category; Gold Placer Mining; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Regulation; Notice of New Information and Request for Comment, and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of new information, request for comment and extension of comment period.

SUMMARY: EPA has obtained additional data and other information to be used to develop gold placer mining effluent limitations guidelines, and new source performance standards under the authority of the Clean Water Act. EPA requests comments on this new information. In addition EPA is extending the comment period on the November 20, 1985 proposed regulation to close at the same time as the comment period for this notice of new information.

DATES: Comments on this new information and on the proposed regulation must be submitted by April 14, 1986.

ADDRESSES: Send comments to William A. Telliard, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention ITD Docket Clerk. The supporting information and data described in this notice are available for inspection and copying at the following locations:

EPA Public Information Reference Unit, Room 2404 (Rear) PM-213, 401 M Street, SW., Washington, DC 20460
EPA Region X Library, 1200 Sixth Avenue, Seattle, Washington 98101
EPA Alaska Regional Office, Federal Building Room E556, 701 C Street, Anchorage, Alaska 99513
ADEC Northern Regional Office, 675 7th Avenue, Station K, Fairbanks, Alaska 99707

The comments on this notice will be considered in the development of the final effluent limitations guidelines and standards. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Willis E. Umholtz at (202) 382-7191.

SUPPLEMENTARY INFORMATION: EPA proposed effluent limitations guidelines and new source performance standards for the gold placer mining subcategory of the ore mining and dressing point source category on November 20, 1985 (50 FR 47982). In that notice, EPA stated that the comment period on the proposal would close on March 14, 1986. In order to enable the public to review and comment on the additional information described in this notice at the same time it comments on the proposal, EPA is hereby extending the end of the comment period on the November 20th proposal to April 14, 1986. The comment period for the new information described in this notice will also close on April 14, 1986.

A. Method Detection Limit

The limit for settleable solids (SS) in the gold placer mining industry historically has been a controversial issue with resultant litigation between industry and the various regulatory agencies. As the use of settling ponds has increased over the years (in order to comply with NPDES permit limitations, and to meet mining water needs in water short areas), and the design, operation and maintenance of these facilities have continued to improve, it has become apparent that this effluent parameter could be established at a somewhat lower limit than in the past. The NPDES permits issued to Alaska placer miners in 1984 established limits of 0.7 ml/l SS for a monthly average and 1.5 ml/l SS as a daily maximum. These levels, which were set after a review of the 1981, 1982 and 1983 data, were based on averages of all the data available. In the course of preparing the proposed guidelines and standards, the Agency reexamined the same data and determined that a very high percentage of the mines for which it had data could reach 0.2 ml/l SS or less (21 mines) all the time and a large number (107 mines) could reach 0.2 ml/l SS or less part of the time (based on 2610 individual SS tests). This information is in the record for the proposal.

The information indicates that the better designed, operated and maintained settling ponds could attain these lower limits for SS. In addition, EPA contractor field tests in 1984 at a number of different mines confirmed that this same limit (0.2 ml/l or less) was attainable.

In order to verify that this 0.2 ml/l SS limit can be read on a reasonable repeatable basis, and therefore is the appropriate limit to include in the Agency's regulations, the Agency performed a "Method Detection Limit (MDL)" test. The purpose of this test was to determine the lowest level of SS

that can be read accurately. This test was performed in July 1985 at 10 different mine sites in Alaska utilizing the exact same test procedures at each site.

The test procedures used are described in:

1. "Guidelines Establishing Test Procedures for Analysis of Pollutants under the Clean Water Act," 40 CFR Part 136 (50 FR #694, #696, January 4, 1985).

2. "Definition and Procedures for the Determination Limit," Appendix A, Revision 1–11, prepared by EPA's Office of Research and Development, Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, Ohio.

First, inlet and outlet waters at each mine were tested for SS. Than inlet and outlet waters were blended to form two different test samples. One sample was approximately 0.20 ml/l SS and the other was about 0.10 ml/l SS. Then seven replicates of each of the blends were made an SS tests were performed. At the end of the test period, each replicate of each of the samples was independently read and recorded by the miner, an EPA contractor, and an EPA employee. The same samples were bottled and shipped to the EPA Environmental Laboratory in Cincinnati, Ohio, where the tests were rerun using the same procedures. A statistical analysis of these data resulted in a 0.19 ml/l 95th percentile reproducibility level, which was then rounded off to 0.2 ml/l. In addition, the EPA Headquarters' Analysis and Evaluation Division analyzed the same field data, and derived the same reproducibility level.

The reproducibility level represents the ultimate confidence level (UCL) in readability for any given data set at a specified percentile. In this case, the 95th percentile was selected. Thus this test indicates that one can reproduce and read the 0.2 ml/l SS limit with confidence of acceptable accuracy 95 percent of the time.

The results of both these test series and additional supporting documents are included in the record for this notice. EPA invites comment on its MDL analysis and how it should be used in setting effluent limitations guidelines and standards.

B. Additional Technical and Economic Data

During the 1985 mining season, in order to broaden its economic and technical data bases, the Agency visited more than 50 mines in Alaska, Washington, Montana, Idaho and Oregon. About a dozen of these mines had been visited in prior years. Agency personnel obtained twenty new mine profile questionnaires during the summer. The Agency also employed an independent Alaska-based contractor to collect additional economic and technical data; he obtained completed questionnaires from 24 mining operations. Five more questionnaires were completed by a group of miners in the McGrath area of Alaska. A total of 49 additional mine profiles and questionnaires were obtained from these various sources during the 1985 season and are included in the record for this notice. The information contained in these questionnaires will be helpful in refining the model mine framework EPA developed to assess the economic impacts of the proposed regulation.

The profile sheets contain information concerning in-place gold values, gold recovery rates, labor costs, equipment usage and costs, settling pond construction and maintenance costs and other topics relevant to the economics of gold placer mining. Mine sizes represented range from very small (8 to 10,000 cubic yards processed in a season) to quite large (over 200,000 cubic yards processed during a season). Twelve of the 49 mines are located in the lower 48 states and the balance (37 mines) are in Alaska.

The Agency will use this information to reevaluate its previous assumptions concerning average or "typical" assay values (i.e. gold content in ore), types and amounts of heavy equipment in use at mine sites (including age and earth-moving capacities), and especially "auxiliary expense" requirements. The latter refers to such ancillary equipment and cost items as pumps, generators, wiring, controls, camp supplies, freighting, start-up and clean-up, on-site and off-site maintenance, and financing charges. The bulk of these items were not specifically accounted for in the Agency's model mine framework, but were included in the work-up for each model's operating costs by the addition of a generalized "auxiliary expenses" parameter, calculated as 20 percent of the mine's total heavy equipment cost. The Agency intends to use these data to more accurately quantify these costs for the final regulation.

The Agency solicits comments on all of the technical and economic data gathered plus its ultimate use by the Agency in formulating the effluent limitations guidelines and standards.

Dated: February 5, 1986.

Larry Jensen,

Assistant Administrator for Water.

[FR Doc. 86–3279 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–58; RM–5033; RM–5093]

FM Broadcast Station in Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotments of Channels 233A and 241A to Tomah, Wisconsin, as that community's second and third FM services, in response to separate requests from Tony J. Trunkel and Phyllis Rice, respectively.

DATES: Comments must be filed on or before March 31, 1986, and reply comments on or before April 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Tomah, Wisconsin) (MM Docket No. 86–58, RM–5033, RM–5093).

Adopted: January 29, 1986.

Released: February 7, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration two separate petitions for rule making requesting the allotment of Class A channels to Tomah, Wisconsin, as that community's second and third FM service. The first petition, filed by Tony J. Trunkel ("Trunkel"), seeks the allotment of Channel 233A. The second petition filed by Phyllis Rice ("Rice"), licensee of Station WTMB (AM), Tomah, Wisconsin, requests the allotment of Channel 241A. Each petitioner has stated an intention to apply for the respective channel, if allotted.

2. Both channels may be allotted consistent with the Commission's minimum distance separation requirements provided site restrictions

are imposed. Channel 233A requires a site restriction of 0.8 kilometers (0.5 miles) east of Tomah to avoid short spacing to Station WIAL–FM, Channel 231, at Eau Clair, Wisconsin. Channel 241A requires a site restriction of 1.1 kilometers (0.7 miles) northeast of the community to avoid short spacing to Station KSAY(FM), Channel 241, Clinton, Iowa.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotments could provide a second and third FM service to Tomah, Wisconsin, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Tomah, Wisconsin	255	233A, 241A, 255

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 31, 1986, and reply comments on or before April 15, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Tony J. Trunkel, RT. 5 Box 286, Tomah, WI 54660 (Petitioner)

James R. Bayes, Anne D. Neal, Wiley & Rein, 1776 K Street, NW., Washington, DC 20006 (Counsel to Phyllis Rice)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–3261 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 392, 393, 394, 395, 396, 397, 398, and 399

[BMCS Docket No. 118]

Motor Carrier Safety Act of 1984; Submission of State Safety Regulations for Review; Analysis

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement of review of State safety regulations.

SUMMARY: This notice requests each State to submit to the Commercial Motor Vehicle Safety Regulatory Review Panel any State law or regulation pertaining to

commercial motor vehicle safety which may have been enacted or promulgated since the date of the State's last submission. States are also requested to submit an analysis of the stringency of the State laws and regulations relative to the Federal Motor Carrier Safety Regulations. Such analysis of State laws and regulations should be done based on the Federal Motor Carrier Safety Regulations and the State laws and regulations as they are in effect on April 30, 1986.

DATES: States are requested to submit their analyses by June 30, 1986.

ADDRESSES: States are requested to submit their analysis to the Commercial Motor Vehicle Safety Regulatory Review Panel, Bureau of Motor Carrier Safety, Office of the Chief Counsel, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph J. Fulnecky, Bureau of Motor Carrier Safety, (202) 755–1011; or Mr. Thomas P. Holian, Esq., Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (the Act) 49 U.S C.A. 2501–2520 (West 1985), calls for the submission of State laws and regulations pertaining to commercial motor vehicle safety to the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) for review. 49 U.S.C.A. 2506 (West 1985). The Safety Panel was established by the Federal Highway Administration (FHWA) on June 18, 1985, pursuant to section 209 of the Act, 49 U.S.C.A. 2508 (West 1985). *See* 50 FR 31452 (1985). Under the provisions of the Act, the Safety Panel will review State laws and regulations, including laws and regulations of political subdivisions of States, to identify those which pertain to commercial motor vehicle safety. The Safety Panel will then analyze and determine their stringency relative to the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Parts 390–399 (1985), and make recommendations to the Secretary of Transportation, through the Administrator of the Federal Highway Administration, as to which State laws and regulations should remain in force and effect after October 30, 1989. 49 U.S.C.A 2507 (West 1985). The Secretary will then initiate rulemaking to determine which State laws and regulations may remain in force and effect after October 30, 1989. 49 U.S.C.A. 2507(c) (West 1985. In making these determinations the Secretary is directed to give great weight to the corresponding determination of the Safety Panel. 49 U.S.C.A. 2507(c)(5)(A) (West 1985).

In order to identify which State laws and regulations pertain to commercial motor vehicle safety, the FHWA issued initial guidelines for the submission of State laws and regulations for review under section 207(c) of the Act, 49 U.S.C.A. 2506(c) (West 1985). *See* 50 FR 1243 (1985). *See also* 50 FR 7357 (1985) (public notice of clarification of guidelines to States). In response to this notice, the States submitted copies of their laws and regulations by April 30, 1985. This information is being compiled, indexed, and computerized by a contractor for the FHWA to facilitate the work of the Safety Panel and the agency. The Safety Panel, which will be kept apprised of the progress of this work by the contractor, is scheduled to meet again at the end of June 1986 to consider the work of this contractor. In order to ensure that the compilation of State laws and regulations is as complete as possible, States are reminded that section 207(b) of the Act provides that each State shall send a copy of any State law or regulation enacted or promulgated after April 30, 1985, to the Safety Panel. 49 U.S.C.A. 2506(b) (West 1985). Such laws or regulations may be sent to the Bureau of Motor Carrier Safety of the Federal Highway Administration, U.S. Department of Transportation, at the address given above. Reference should be made to the Docket number indicated above.

In anticipation of the next phase of the Safety Panel's work, *i.e.*, the analysis of the State laws and regulations to determine their stringency relative to the FMCSR, the Safety Panel is requesting States to indicate in writing whether each State law or regulation submitted by it—

(A) Has the same effect as;

(B) Is less stringent than; or

(C) Is additional to or more stringent than;

any provision of the Federal Motor Carrier Safety Regulations. This request is made pursuant to section 207(d) of the Act. 49 U.S.C.A. 2506(d) (West 1985). States are requested to compare the State laws and regulations to the FMCSR as these laws and regulations may exist on April 30, 1986. Under section 206(e) of the Act, if the Department has not issued new regulations pertaining to commercial motor vehicle safety under the authority of section 206 of the Act by April 30, 1986, then the regulations previously issued by the Department pertaining to commercial motor vehicle safety (*i.e.*, the FMCSR) are deemed to be issued under the new Act. 49 U.S.C.A. 2505(e) (West 1985).

Initial guidance for the submittal and analysis of State laws and regulations was published by the FHWA in the **Federal Register** on January 10, 1985. *See* 50 FR 1243 (1985). *See also* 50 FR 7357 (1985) (public notice of clarification of guidelines to States). Particular attention should be paid to Guideline D regarding the analysis of State laws and regulations. That guideline discusses the need for an analysis of both the applicability of any State law or regulation and the relative stringency of that requirement. The guideline further suggested the use of an information matrix chart similar to that produced in the notice for reporting the State's determinations. The States are requested to submit their analyses by June 30, 1986, to the Safety Panel, addressed to the Bureau of Motor Carrier Safety of the Federal Highway Administration, U.S. Department of Transportation, at the address given above and referencing the Docket number indicated above.

Copies of new State laws or regulations submitted to the Safety Panel pursuant to section 207(b) of the Act should be accompanied by a copy of the State's analysis of that law or regulation under section 207(d) of the Act.

Once the Safety Panel has identified which State laws and regulations pertain to commercial motor vehicle safety, and determined the relative stringency of each, it will turn its attention to a closer review of those State laws and regulations determined to be additional to or more stringent than the Federal regulations. This review will be to determine whether, with respect to such additional or more stringent State requirement—

(A) There is no safety benefit associated with such State law or regulation;

(B) Such State law or regulation is incompatible with the Federal regulation; or

(C) Enforcement of such State law or regulation would be an undue burden on interstate commerce.

49 U.S.C.A. 208(b)(2)(B) (West 1985).

When the Safety Panel begins this portion of its review, States and other interested parties will be requested to provide their views to the Panel.

Issued on: February 10, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-3341 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 51, No. 31
Friday, February 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

Special Volunteer Programs, Availability of Funds; Demonstration Grants

The Office of Voluntarism Initiatives of ACTION announces the availability of funds during fiscal year 1986 for a demonstration grant under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1983, as amended (Pub. L. 93–113, Title I, Part C; 42 U.S.C. 4992).

The purpose of this competitive announcement is to identify and support an innovative project that can demonstrate an ability to work with, support, and encourage the development of various volunteer groups and individuals throughout the nation who are working to prevent drug use among youth.

A. Objective

Volunteer Demonstration Projects which address areas of human concern where citizens, as volunteers, can contribute toward the overall health and well-being of their communities. This particular request for applications is designed to fund a national drug information resource center with the demonstrated capability of providing a substantial amount of technical information and assistance both over the phone and in writing to the general public with regard to drug use prevention, especially in areas such as: Volunteer parent, citizen, and youth group development; current pharmacological data on illegal drugs; and conference organizing.

This project must also be capable of identifying volunteer drug use prevention efforts throughout the country, enabling the public to learn of volunteer drug use prevention groups in their own states and/or communities from which they can obtain advice and information.

B. Eligible Applicants

Only applications from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant

Up to $225,000 may be available for this grant. The budget period for this demonstration grant begins on April 1, 1986 and ends December 31, 1986. Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for demonstration grants.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in drug use prevention efforts using volunteers will be given preference. The General Criteria are as follows:

1. Experience in managing a high-volume, toll-free number and responding to large numbers of oral and written inquiries per year in order to give technical assistance and accurate information to the general public regarding the prevention of drug use by youth, expecially in areas such as: Volunteer parent, citizen, and youth group development; current pharmacological information on illegal drugs; the identification of local volunteer groups throughout the country; and organizing drugh use prevention conferences.

2. Evidence of cooperation on the part of a large number of parent, citizen, and youth groups throughout the country willing to serve as volunteer resources in the area of drug use prevention among youth.

3. Promise of developing innovation or knowledge in the area of preventing drug use among youth and demonstrated ability to survey the impact of drug use preventin activities and provide survey results to volunteer organizations.

4. Cabability of proposed staff, including demonstrated achievements in the drug use prevention field and providing technical assistance to volunteer organizations such as parent, citizen, and youth groups.

5. Capability of obtaining support from a broad range of private and public organizations for the volunteer movement which seeks to prevent drug use among the nation's youth.

6. Carefully formulated, time-phased and measurable objectives with feasible methods for meeting those objectives.

7. Feasibility of proposed budget. While applicants are not required to contribute a specific portion of the project's costs, they are encouraged to do so. Applicants capable of such contributions should specify the sources and amounts of non-federal contributions, and the sources and nature of in-kind, non-federal contributions.

8. Plans for becoming self-sufficient following the completion of the project supported by ACTION funds.

E. Application Review Process

ACTION's Office of Voluntarism Initiatives staff, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for Voluntarism Initiatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the Associate Director for Voluntarism Initiatives, Room 516, 806 Connecticut Avenue, NW., Washington, DC 20525. The deadline for receipt of applications is March 11, 1986. Only those that are received by 5:00 p.m. on this date will be eligible for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (Form A–1017) with narrative budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. List of sponsor's governing board members and their relationship to the community.

To receive an application form, please call ACTION's Office of Voluntarism Initiatives at (202) 634–9749.

Signed at Washington, DC this 11th day of February 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86–3312 Filed 2–13–86; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting; Committee on Rulemaking

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States, to be held at 2:00 p.m. Friday, March 7, 1986, at the offices of Hughes, Hubbard & Reed, 1201 Pennsylvania Avenue, NW., Suite 300, Washington, DC. The committee will meet to discuss a draft report by Professor William Funk of Lewis and Clark College, Northwestern School of Law, on implementation of the Paperwork Reduction Act of 1980.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting.

Contact Persons: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037 (Telephone: (202) 254–7065). Minutes of the meeting will be available on request.

Dated: February 11, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–3287 Filed 2–13–86; 8:45 am]

BILLING CODE 6110–01–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet in Room 105, National Archives and Records Administration Building, Eighth and Pennsylvania Avenue NW, Washington, DC, on Monday and Tuesday, February 24–25, 1986.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The Agenda for the meeting includes the following:

Monday, February 24, 1986
Room 105
Eighth and Pennsylvania Avenue NW
Washington, DC 20408

9:30 a.m.
Call to Order
Chairman's Welcome
Swearing In Ceremony

I. Revision of Section 106 Regulations
II. Report of the 1986 Annual Report Task Force
III. Report of the Executive Director
  A. FY 1986 Appropriations
  B. FY 1987 Budget Request
IV. Report of the General Counsel
  A. Council Regulations Concerning Nondiscrimination on the Basis of Handicaps
V. Report of the Office of Cultural Resource Preservation
  A. Section 106 Status Report
VI. 1986 ICCROM General Assembly
VII. New Business.

DATE: The meeting will begin at (9:30 a.m., Monday, February 24, 1986.

Note.—The meetings of the Council are open to the public. To facilitate entrance into the National Archives and Records Administration Building, it is recommended that those wishing to attend the meeting call the offices of the Advisory Council on Historic Preservation (202/786–0503) in advance.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, Suite 809, Washington, DC 20004.

Dated: February 10, 1986.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 86–3262 Filed 2–13–86; 8:45 am]

BILLING CODE 4310–10–M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 7:00 p.m., on March 21, 1986, at the Two Rivers Plaza, 159 Main, Grand Junction, Colorado. The subcommittee will meet to receive information on problems related to Hispanic dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3342 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m. on March 5, 1986 at the Paine-Whitney Gymnasium, Yale University, Tower Parkway, Trophy Room, New Haven, Connecticut. The purpose of the meeting is to review plans for its

proposed study of affirmative action in the construction industry.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Stewart or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3343 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Connecticut Advisory Committee; Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission originally scheduled for February 19, 1986, convening at 3:00 p.m. and adjourning at 5:00 p.m., at the Yale University, Tower Parkway, Varsity Room, New Haven, Connecticut (FR Doc. 86–1965, Page 3815) has been canceled.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3344 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Education Subcommittee of the Maryland Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 9:00 p.m. on March 6, 1986, at Anne Arundel County Board of Education, 2644 Riva Road, Center 3A, Annapolis, Maryland. The purpose of the subcommittee meeting is to review a transcript of the community forum on equity issues in special education programs in preparation to draft a briefing memorandum on the subject.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lorretta Johnson or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717, (TDD 202/254–5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3345 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on February 27, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to discuss plans for FY '86 projects and community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Philip Perlmutter or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3346 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Mississippi Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m., on March 3, 1986, at the Law Center, Conference Room, University of Mississippi, Oxford, Mississippi. The purpose of the meeting is to review the draft memorandum to the Commissioners on equality of municipal services in Tunica, Mississippi.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lewis Westerfield or Bobby Doctor, Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3347 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on March 20, at McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to make plans for the implementation of the Committee's Elderly and Disabled Voter Access Project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert Wells or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5)

working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, Februay 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3348 Filed 2-13-86; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 pm., on March 4, 1986, at Lincoln Plaza, 4345 N. Lincoln Blvd., Seminole Road, Oklahoma City, Oklahoma. The purpose of the meeting is to conduct a community forum on desegregation in the Oklahoma public higher education system.

Persons desiring additional information, or planning a presentation to the Committee, should contact committee Chairperson, Charles L. Fagin or J. Richard Avena, Director of the Southwestern Regional Office at (512)229-5570, (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3349 Filed 2-13-86; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on March 19, 1986, at the Gressette Senate Office Building, State Capitol Complex, Room 105, Columbia, South Carolina. The purpose of the meeting is to review community forums on voting rights and develop plans for next year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Patterson or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) workings days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3350 Filed 2-13-86; 8:45 am]

BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m., on March 1, 1986, at the Casper Public Library, 307 East 2nd Street, Casper, Wyoming. The purpose of the meeting is to plan a community forum on current civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3351 Filed 2-3-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison.

SUMMARY: The Communications Committee on the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on February 21, 1986. The Presidential Board of Advisors was established on August 8, 1985, to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and Place: Friday, February 21, 1986, 2:00 p.m., at the National Alliance of Business, VTW Room, 1771 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATON CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Dated: February 11, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86-3354 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-BW-M

Foreign-Trade Zones Board

[Docket No. 4-86]

Proposed Foreign-Trade Zone Washington Dulles International Airport, Virginia; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Washington Dulles Foreign Trade Zone, Inc., a Virginia non-profit corporation affiliated with Fairfax and Loudoun Counties, requesting

authority to establish a general-purpose foreign-trade zone at the Washington Dulles International Airport, Virginia, within the Washington, DC Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 5, 1986. The applicant is authorized to make this proposal under section 62.1–162 of the Code of Virginia.

The proposed foreign-trade zone would cover 250 acres within the Washington Dulles International Airport Complex, Fairfax and Loudoun Counties, Virginia. The site, located west of the North Service Road, contains several buildings for aircargo activity. United Air Warehousing Associates would be the zone operator.

The application contains evidence of the need for zone services in the area. A number of firms have indicated an interest in using zone procedures for handling products such as electronic and communication equipment, medical devices, sports equipment, specialty educational supplies and photographic equipment. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 SE. 5th St., Miami, FL 33131; and Colonel Martin W. Walsh, Jr., District Engineer, U.S. Army Engineer District Baltimore, P.O. Box 1715, Baltimore, MD 21203.

As part of its investigation, the examiners committee will hold a public hearing on March 11, 1986, beginning at 9:00 a.m., in Salon B of the Dulles Marriott Hotel, West Service Road, Washington Dulles International Airport.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by March 4. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 10, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: February 10, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–3291 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-502]

Antidumping; Fuel Ethanol From Brazil; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that fuel ethanol from Brazil is being, or is likely to be sold in the United States at less than fair value. We also have determined that critical circumstances do not exist. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, the ITC will make a final determination by March 21, 1986.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1769 or (202) 377–5332.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The dumping margins range from 17.6 to 298.7 percent, and the weighted-average margins for the two respondents are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On February 25, 1985, we received a petition filed in proper form by the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the domestic producers of fuel ethanol. We were informed, by letter dated March 15, 1985, that the Oil Chemical And Atomic Workers International Union (OCAW) joined the Ad Hoc Committee of Fuel Ethanol Producers as petitioners. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, an U.S. industry. The petitioners also alleged that sales in the home market were made at prices below the cost of production, and that "critical circumstances" exist.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 18, 1985 (50 FR 11748), and notified the ITC of our action.

On April 11, 1985, the ITC found that there is a reasonable indication that imports of fuel ethanol from Brazil are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1678, April 1985).

Based on information obtained in response to preliminary questionnaires, we presented questionnaires to Cooperative Central dos Produtores de Acucare de Acool do Estado de Sao Paulo (COPERSUCAR) and certain of its distiller members and related sugar cane growers and Matarazzo Trading Cia. de Exportacao e. Importacao (Matarazzo), formerly known as Comac Trading, because these companies knew that the merchandise was being sold for export to the United States.

Three independent trading houses, Companhia de Comercio Exterior (I.A.T.), Cotia Comercio Exportacao e. Importacao S.A. (Cotia), and S.A. Costa Pinto Exportacao e. Importacao (Costa Pinto), filed voluntary responses. The responses from Cotia and Costa Pinto were incomplete and, therefore, were not used. I.A.T.'s response, being

complete, was used for purposes of the preliminary determination.

By letter dated June 12, 1985, the petitioners alleged that Interbras, the major trading company selling fuel ethanol to the United States, was reselling the merchandise in the United States at prices which did not cover its costs of acquisition from unrelated suppliers plus the costs incurred in selling the merchandise to the unrelated U.S. purchasers. After careful consideration we initiated an investigation of the facts relating to this allegation. Therefore, we presented Petrobras Comercio International S.A. Interbras (Interbras) with a questionnaire on July 18, 1985. The responses to this questionnaire included information from various entities in the Petrobras corporate family These entities are referred to collectively and separately as P.I.I. throughout this notice.

The preliminary determination was postponed until September 18, 1985 (50 FR 29494, 50 FR 33814) at the request of the petitioners. The preliminary determination was made on September 18, 1985 (50 FR 38871).

On October 7, October 8, 1985, and January 8, 1986, requests were received from respondents requesting that the final determination be postponed until February 7, 1986. the requests were granted on January 13, 1986 (51 FR 2746).

Scope of Investigation

The product covered by this investigation is fuel grade ethyl alcohol (fuel ethanol), currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under dual item number 427.8800/901.50, as well as that entered as blended ethanol under TSUSA item numbers 430.10, 430.20, and 432.10.

Other blends may be included in the scope of the investigation.

The Department intends to work closely with the U.S. Customs Service to prevent circumvention of our determination through importation of ethanol blends.

We made comparisons on approximately 90 percent of sales of fuel ethanol to the United States during the period of investigation, September 1, 1984, through February 28, 1985.

Fair Value Comparisons

To determine whether sales or the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below, for P.I.I. and Copersucar.

United States Price

P.I.I.

Based on the allegation that P.I.I. was selling Fuel ethanol at a loss (i.e. at prices which were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from unrelated suppliers), we analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of investigation. In order to determine whether P.I.I. recovered its acquisition costs, we deducted all costs and expenses incurred in selling the merchandise by Interbras and its U.S. subsidiary, Internor, from the selling price to the first unrelated U.S. purchaser. We made deductions from the selling price for special customs duties, regular customs duties, general selling expenses, insurance, credit costs, storage and handling, commissions, and discounts incurred in the United States. We also deducted operating costs incurred in Brazil, and ocean freight charges. Finally, we made an addition to the selling price to the first unrelated U.S. customer for payments received under the IPI export credit premium program because these payments were directly related to the exportation of the ethanol and because they effectively enhanced the net return to Interbras.

Certain of the costs incurred by P.I.I. were denominated in cruzeiros. For purposes of converting cruzeiro denominated amounts to United States dollar equivalants, we used the certified exchange rate for the date of exportation. We considered these rates as reflecting most accurately the actual costs incurred. All other charges were reported in U.S. dollars. Therefore, no currency conversion was required.

Based on our analysis of all sales by P.I.I. in the U.S. during the period of investigation, we have determined that a substantial portion of those sales were at prices which resulted in substantial losses to P.I.I. relative to its acquisition costs. Normally a determination of whether there are sales at less than fair value focuses on a manufacturer's or producer's sales. However, the law recognizes that where a trading company (middleman) is involved in sales under investigation, that trading company also can be the cause of less than fair value sales. Congress, in the legislative reports to the Trade Agreements Act of 1979, left to this agency the task of establishing a methodology which would accurately capture this "middleman dumping."

We determined whether such "middleman dumping" was occurring by analyzing whether a substantial portion of the trading company's sales to the United States during the period of investigation were at prices substantially below its acquistion costs for the merchandise. We do not believe that an analysis based solely upon whether any sales have been made at prices below acquisition costs by any amount is appropriate here. P.I.I. commingles acquisitions of ethanol (a fungible product) both prior to exportation and between importation and sale in the United States. Thus, they cannot attribute acquisition costs directly to specific sales. Under these circumstances we do not believe it would be reasonable to determine there was "middleman dumping" based on a few sales determined after the fact to be slightly below acquisition cost. Instead, we believe that measurement of the proportion of sales priced below the cost of acquisition as well as the magnitude of the resulting losses on those sales forms an appropriate basis for determining that it was selling the merchandise at less than acquisition cost.

Based on our determination of sales at less than acquisition cost, we have determined that the appropriate level at which to make fair value comparisons is on sales by Interbras and its related U.S. subsidiary, Internor, to the United States. Because all of the U.S. sales by P.I.I. were made after importation, we based United States price on exporter's sales price, in accordance with section 772(c) of the Act. We calculated the exporter's sales price on the basis of ex-tank prices with deductions for the costs indicated above in the discussion of the analysis of sales at less than acquisition costs, with the exception of selling expenses incurred in Brazil which we did not deduct.

Copersucar

As provided for in section 772(b) of the Act, for sales by Copersucar through a trading company other P.I.I., we based United States price on purchase price because Copersucar knew that the fuel ethanol was destined for the United States prior to this sale. The term of sales was ex-tank, therefore, a deduction was made for inland freight.

I.A.T. and Matarazzo

Although we received and verified completed questionnaire responses from I.A.T. and Matarazzo, we did not make fair value comparisons on ethanol sold to the United States through these two companies for purposes of this determination. Matarazzo, despite its original statement to the contrary, now claims that its suppliers knew at the

time of the sales to Matarazzo that the merchandise was destined for the United States. I.A.T. claims that its suppliers did not know the destination of the ethanol it purchased. However, based on our knowledge of the industry, we have determined that the only export market for fuel grade anhydrous ethanol from Brazil during the period of investigation was the United States. Since I.A.T. and Matarazzo do not sell in the home market, we have determined that their suppliers know or should have known that the anhydrous ethanol was being sold for export to the United States. Therefore, the appropriate level at which to make fair value comparison is sales prices between these companies and their suppliers for United States price and sales between suppliers and suppliers' customers in the home market for foreign market value. However, we do not have information on the suppliers' prices or costs, because in their original responses both trading companies asserted that their suppliers had no knowledge of destination. Since we do not not have a basis for determining United States price or foreign market value for sales of these suppliers to I.A.T. and Matarazzo, we have not calculated margins for these sales. Instead, we are applying the "all others" rate set forth in the "Continuation of Suspension of Liquidation section of this notice from entries of merchandise from these companies.

Foreign Market Value

General

Petitioner's alleged that home market prices of fuel ethanol were made at prices which were below cost of production, in substantial quantities over an extended period of time, and were at prices which do not permit the recovery of costs over a reasonable period.

P.I.I.

For P.I.I. in accordance with section 773(a)(1)(A), we considered home market sales by its parent, Petrobras, because there was a viable home market. P.I.I. claims that due to the nature of price controls in Brazil, the home market sales are inappropriate for use in determining foreign market value. We determined that home market sales could be used since (1) the mere existence of price controls does not invalidate home market prices (see, *Certain Carbon Steel Products from Brazil*. 49 FR 28298), and (2) these home market sales were in the ordinary course of trade of fuel ethanol in Brazil.

We compared P.I.I.'s home market prices to its costs of acquisition plus expenses to determine whether the home market sales were made at prices below costs. Because the formulation of P.I.I.'s home market prices did not account for the total selling, general and administrative expenses incurred on home market sales, we determined that all home market sales were at prices below cost. Therefore, we based foreign market value on constructed value. Since P.I.I.'s general expenses were less than the statutory minimum of 10 percent, we added the statutory minimum to the acquisition costs. Since the actual profit was below the statutory minimum of 8 percent, we added the statutory minimum. There were no packing costs. We made a circumstance of sale adjustment for the I.P.I. credit premium payment in accordance with § 353.15 of our regulations.

Copersucar

For purposes of determining Copersucar's foreign market value, we determined that Copersucar had a sufficient number of home market sales for purposes of our determination. We compared the home market prices to Copersucar's cost of production to determine whether these sales were at prices below the cost of production. Cost of production was based on the costs of materials, fabrication and general expenses. Due to the hyperinflationary nature of the Brazilian economy, comparisons of prices and the cost of production were made on a monthly basis. We found that Copersucar's prices were below the cost of production for a substantial number of sales, over an extended period of time and were at prices which did not permit the recovery of costs over a reasonable period of time. Therefore, we based foreign market value on the constructed value in the month of the sale to the United States. We calculated the constructed value on the basis of the costs of materials and fabrication. Since the actual general expenses exceeded the statutory minimum of 10 percent, we used the actual expenses. Since profit was less than the statutory minimum of 8 percent, we used the statutory minimum. We made adjustments for differences in credit terms and post-sale storage in accordance with §353.15 of our regulations.

Currency Conversions

All transactions involving Copersucar were denominated in cruzeiros. Therefore, no currency conversions were necessary.

For fair value comparisons for P.I.I. involving exporter's sales price, we used the official exchange rate on the date of purchase in the U.S., consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of our regulations which predate the 1984 Act.

Petitioners' Comments

Comment 1: Petitioners contend that the Department should follow the precedent it established in *Color Television Receivers from Korea* in calculating the credit expenses incurred on U.S. sales by P.I.I. Under this approach the credit period is broken into two segments; first, from date of export to date of sale to the unrelated customer in the United States and second, from the time of that sale to receipt of payment from the unrelated customer. Also, the credit costs associated with these segments should be the parent company's cost of short-term credit and the U.S. subsidiary's short-term credit cost, respectively. Finally, the Department must ascertain the actual number of days associated with each segment and not rely on average periods.

DOC Response: For purposes of this final determination we have continued to use the methodology employed in the preliminary determination, and in numerous previous cases, and have included only those credit expenses incurred between the date of sale to the unrelated U.S. customer and payment by that customer.

Comment 2: Petitioners ask that the Department use best information available for determining direct expenses incurred in Brazil on U.S. sales by P.I.I. because the response contained only a lump-sum amount, thus denying the Department an opportunity to judge the completeness and accuracy of the reported costs.

DOC Response: During the verification of the response, we carefully examined all expenses incurred by P.I.I. on its U.S. sales and we have deducted those in our analysis of sales at less than the cost of acquisition.

Comment 3: Petitioners claim that all indirect selling expenses incurred in Brazil should be deducted from the exporter's sales price.

DOC Response: For purposes of this final we have continued to use the methodology employed in the preliminary determination, and in numerous previous cases, and have not deducted selling expenses incurred prior to importation.

Comment 4: Petitioners argue that all cruzeiro-denominated expenses relating to U.S. sales should be converted to dollars at the exchange rates in effect at

the time the expenses are incurred for the analysis of "trading company dumping" as well as for the calculation of exporter's sales prices. Alternatively, if conversions are made as of the date of sale, cruzeiro costs should be adjusted to reflect what cost would have been had it been incurred in the month of the sale.

DOC Response: For all conversions involved in the ESP calculations we used the exchange rate in effect on the date of sale for reasons stated in the "Foreign Market Value" section of this notice. For our "middleman dumping" analysis, we used exchange rates in effect at the time the cost was incurred as most accurately reflecting the true value of money. The use of different exchange rates for the two types of comparisons is appropriate. In trading company dumping analysis we are looking at whether the trading company is covering its cost of acquisition and selling expenses. In exporter's sales price we are deducting charges actually incurred in bringing the merchandise to the U.S. so as to arrive at an ex-tank comparison with foreign market value.

Comment 5: Petitioners argue that because Interbras' subsidary, Interbras Cayman Co., is involved in sales to the U.S. the Department should deduct direct or indirect expenses incurred prior to importation by that subsidiary from exporter's sales price.

DOC Response: See our response to Petitioners' Comment 3.

Comment 6: Petitioners point out that Internor's income statement includes a fund for doubtful accounts and request that a portion of this amount be deducted from exporter's sales prices.

DOC Response: The fund for doubtful accounts was accounted for in the selling, general and administrative expenses of Internor and the appropriate amount was deducted from the selling price in our calculations.

Comment 7: Petitioners claim that the proper basis for the allocation of Internor's general and administrative expenses is sales value, not number of invoices.

DOC Response: We agree that the number of invoices is not an appropriate basis for allocating general and administrative expenses. The Department has applied its usual basis, costs of goods sold, to allocate general and administrative expenses.

Comment 8: Petitioners argue that the Department should reject Interbras/Internor's claim that Petrobras' home market prices, set by the Brazilian National Petroleum Council (CNP), should not be used for foreign market value. Petitioners contend that these sales are at the same level of trade, are made in the ordinary course of trade, and are at quantities similar to Internor's U.S. sales. They argue further that the fact that these prices are set by a state agency does not invalidate the prices.

DOC Response: We agree that the fact that CNP sets than does not invalidate the prices by Petorbras in the home market for use in determining foreign market value. However, since we found that the CNP prices are below Petrobras' costs, we disregarded them.

Comment 9: Petitioners argue that various deductions from the CNP price claimed by Interbras/Internor, including contributions to CNP fund, cannot be allowed. Specifically, petitioners argue that these deductions cannot be treated as circumstance of sale adjustments because they are not directly related to the sales under consideration.

DOC Response: Since we did not base foreign market value on the CNP prices, the issue is moot.

Comment 10: Petitioners contend that a separate margin should not be calculated for Copersucar. Since virtually all of the fuel ethanol sold by Copersucar for export to the United States was sold to Interbras, and since Interbras was selling at less than its acquisition cost plus expenses, the appropriate analysis is at the Interbras level.

DOC Response: We have calculated a separate rate for Copersucar based on its sales to a trading company other than Interbras, because Copersucar knew the destination of the ethanol prior to the sale and because Copersucar filed an adequate response. For Copersucar's sales through Interbras, we did not make fair value comparisions at the Copersucar level.

Comment 11: Petitioners contend that if the Department does calculate a separate margin for Copersucar, the Department does calculate a separate margin for Copersucar, the Department should reconcile the discrepancy between the prices reported by Copersucar and the acquisition costs reported by Interbras.

DOC Response: Since we did not make fair value comparisons on Copersucar's sales through Interbras, the issue is moot.

Comment 12: Petitioners argue that if a separate margin is calculated for Copersucar, the Department should take account of inventory costs incurred prior to the export sale because any ethanol produced above the distilleries' domestic production quotas can only be sold for export. Thus, any inventory expense incurred in the storage of excess production is directly related to export export sales. In addition, any costs incurred between the sale and the date the ethanol leaves the distilleries should also be taken into account.

DOC Response: We disagree that such inventory costs are directly related to U.S. sales because ethanol sold in both markets is drawn from the same inventory. Moreover, production above the quota is not necessarily exported. With regard to the post-sale period, no storage costs were incurred relative to the sale to the sale to the trading company for export to the United States.

Comment 13: Petitioners argue that if a separate margin is calculated for Copersucar, foreign market value should be based on constructed value because of the degree to which Copersucar's home market sales were at prices below the cost of production.

DOC Response: For purposes of our comparison, we determined that Copersucar's home market sales were made over an extended period of time and in substantial quantities at prices which did not permit recovery of all costs within a reasonable period of time. Therefore, we based foreign market value on constructed value.

Comment 14: Petitioners argue that the Department should properly match contemporaneous costs and prices in the context of Brazil's hyper-inflationary economy.

DOC Response: We agree. In the analysis of sales below cost of production, the Department followed its usual practice in hyper-inflationary economies and compared prices in each month to the industry weighted-average cost of production of the same month.

Comment 15: Petitioners argue that in calculating the cost of production for fuel ethanol, the Department should not use the average cost of producing hydrous and anhydrous ethanol, as reported by certain respondents. This is because hydrous ethanol is a prior stage product and less costly to produce. Therefore, use of average ethanol production costs understates the cost of producing anhydrous.

DOC Response: We agree. The Department did not use the average cost of hydrous and anhydrous ethanol production, but adjusted this average cost for the additional processing required to produce anhydrous ethanol.

Comment 16: Petitioners allege that the depreciation costs reported by Copersucar's member distilleries appear to be understated.

DOC Response: The depreciation expenses reported in the responses did not reflect the full amount of the respondent's depreciation. However, depreciation expenses were included as a part of the monetary correction and

also, in some cases, as part of "other" expenses. After considering the full amount of depreciation included in the various cost categories, the Department concluded that such expenses were not understated.

Comment 17: Petitioners claim that the ICM tax paid on ethanol inputs may have been understated.

DOC Response: The Department verified the amount of the ICM tax paid on ethanol inputs and did not find any discrepancies. Therefore, the verified amount was used.

Comment 18: Petitioners allege that distillery costs which are shared between ethanol and sugar production may be improperly allocated by (1) including costs which can be directly tied to the production of one of the products and (2) by allocating the costs on the basis of costs of goods sold rather than production volume.

DOC Response: Distillery costs were allocated between ethanol and sugar production based on production volume, not cost of goods sold. Costs which were allocated by production volume were costs incurred in the common processes used for the production of ethanol and sugar.

Comment 19: Petitioners argue that intercrop and sugar cane production costs should be adjusted by a Brazilian inflation index, such as ORTN, so that they can be properly allocated.

DOC Response: We agree. The methodology used by the Department indexes all intercrop planting, fallow and cultivation costs.

Comment 20: Petitioners argue that the Department erred in calculating Copersucar's credit expenses by not treating prepayment for home market sales as a credit revenue.

DOC Response: For purposes of this determination we have treated prepayment as a credit revenue.

Comment 21: Petitioners contend that Copersucar's claim for home market inventory costs should be denied unless they are shown to have been incurred after the sales and are borne by Copersucar since there is evidence on the record that the government may be absorbing these costs.

DOC Response: Since we are using the date of invoicing as the date of sale, we do not consider these costs as post-sale inventory costs and have made no adjustment.

Comment 22: Petitioners argue that the margins calculated for Matarazzo and I.A.T. were calculated at the incorrect level of trade since knowledge of destination can be attributed to their suppliers at the time of sale.

DOC Response: See our response to Petitioner's Comment 25.

Comment 23: Petitioners contend that margins on sales through Matarazzo and I.A.T. should be based on their suppliers' constructed value since those suppliers are probably selling in the home market at prices below the cost of production.

DOC Response: See our discussion in the "United States Price" section of this notice.

Comment 24: Petitioners argue that the margin for "all others" was based on an average which improperly included the Copersucar margin. Since the vast majority of Copersucar's exports were through Interbras, this ethanol was double-counted in the calculation of the "all others" rate.

DOC Response: For purposes of this determination, we based the margin for "all others" on the weighted average of the margins for sales by P.I.I. and sales by Copersucar to a trading company other than Interbras. Therefore, we avoid double-counting.

Comment 25: Petitioners contend that the Department should not consider the amended voluntary responses filed by Cotia and Costa Pinto after the preliminary determination since they were not filed in a timely manner.

DOC Response: Since distillers selling through independent trading companies have or should have had knowledge of destination, imputed or actual, the information in the responses is irrelevant to this determination. Therefore, issues relating to our use of these responses are moot.

Comment 26: Petitioners support the Department's inclusion of fuel ethanol containing certain additives within the scope of the investigation. Petitioners urge a clarification of the scope of the investigation of Brazilian ethanol which has been treated in the Caribbean Basin region by removing water to create anhydrous ethanol for fuel use.

DOC Response: The issue concerning wet Brazilian non-fuel grade ethanol which is shipped to third countries to be dehydrated into anhydrous fuel ethanol for export to the United States was first raised in Petitioners' Prehearing Brief. As we have no knowledge of actual shipments of this nature, originating from Brazil, entering into the United States, we determine that a clarification of the scope of our determination would be premature. If, at a later date, or at the time of any administrative review there is evidence of such imports, the Department will address the issue more fully.

Comment 27: Petitioners argue that the Department should follow the practice adopted in its recent findings on *Hydrogenrated Castor Oil* and *12-Hydroxystearic Acid from Brazil* and not make an adjustment for the IPI credit premium on P.I.I.'s U.S sales.

DOC Response: We have determined that these payments are a circumstance of sale which is directly related to the export sales and adjusted the foreign market value accordingly.

Comment 28: Petitioner argue that no adjustments can be made to the CNP price charged by P.I.I. in the home market without a detailed reporting of sales transactions and related costs.

DOC Response: Since we did not calculate foreign market value for P.I.I., based on its home market prices, the issue is moot.

Comment 29: Petitioners argue that if a Copersucar rate is deemed appropriate, the analysis should be made at the distillery level since the distillers were aware of the destination of the ethanol.

DOC Response: Copersucar is a cooperative made up of member distillers. As such, all are related parties and are treated as one corporate entity. Therefore, all analysis of prices and costs includes factors relating to the total corporate organization.

Comment 30: Petitioners argue that I.A.T.'s response should be disregarded since certain information was not included in the response and the response was a voluntary response.

DOC Response: Since we did not use I.A.T's response for other reasons, the issue is moot.

Comment 31: Petitioners concur with the Department's use of I.A.T.'s third country sales in the same month as the U.S. sales if analysis is to be done at the I.A.T. level.

DOC Response: Since we did not make fair value comparisons for these sales, the issue is moot.

Comment 32: Petitioners argue that if the Department compares I.A.T.'s third contry sales of hydrous ethanol to U.S. sales of anhydrous ethanol, adjustments for differences in physical characteristics of the merchandise should be based on actual production costs rather than acquisition costs.

DOC Response: Since we did not make fair value comparisons for these sales, the issue is moot.

Comment 33: Petitioners argue that the "all other" rate should reflect the weighted-average margins calculated for P.I.I., I.A.T. and Matarazzo as reflecting actual sales behavior.

DOC Response: See our response to Petitioners' Comment 24.

Respondents' Comments

Comment 1: P.I.I. argues that fair value comparisons for the fuel ethanol that it and its subsidiary Interior sold in

the United States should have been based solely on the pricing practices of its major supplier since that supplier knew that the mechandise was destined for the United States at the time of sale. In P.I.I.'s view, there exists a statutory presumption that the purchase price will be the producer's price to the United States before importation, where the producer knew the destination at the time of its sale to the exporter, and a reseller's price cannot be considered the basis for exporter's sales price once a purchase price transaction is identified.

DOC Response: The legislative history of the 1979 amendments to the Act, while sustaining the Treasury Department's administrative practice of using the price between a manufacturer and unrelated trading company for exports to the United States when the manufacturer knew the destination at the time of its sale to the exporter, was not intended to bar us from looking at all facets of a transaction. Where there is a specific allegation that a trading company is failing to recover its costs in transactions concerning the subject merchandise, we will investigate that allegation to determine whether there is "middleman dumping." See *Roller Chains from Japan*, 48 FR 51801. Based on the allegation in this investigation that P.I.I. was selling fuel ethanol at a loss, we analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of investigation. We found that P.I.I. was selling substantial quantities in the United States at prices substantially below acquisition costs and expenses.

Therefore, we determined that the appropriate level to analyze for our investigation of dumping was that between the trading company and the unrelated United States purchaser. In calculating United States price, the statute directs that either the purchase price, or the exporter's sales price, of the merchandise be utilized, whichever is appropriate. Since the merchandise in question is sold by P.I.I. in the United States after the time of importation, use of the exporter's sales price was appropriate. 19 U.S.C. 1677a.

Comment 2: Interbras contends that any selling below acquisition and selling costs by P.I.I. was, at most, *de minimis* since offsetting profits on some sales offset losses on others resulting in a minimal overall loss, if any.

DOC Response: Our analysis shows that a substantial portion of these sales were made at prices significantly below costs of acquisition plus selling expenses.

Comment 3: P.I.I. argues that there is no statutory or regulatory basis for investigating "middleman dumping."

DOC Response: We disagree. The legislative history to section 772 of the Tariff Act of 1930 directs the Department to examine sales from the foreign producer to middlemen (trading companies) and any sales between middlemen before sale to the first unrelated U.S. purchaser to avoid below cost sales by the middlemen.

Comment 4: P.I.I. argues that the Finsocial tax should be added to the United States price since it is paid only on home market sales.

DOC Response: The statute provides for an addition to United States price for any tax which is rebated or not imposed by reason of exportation of the merchandise, but only if the tax is added or included in home market sales. Since we did not base our comparisons on home market sales, but on constructed value, no adjustment to United States price is required.

Comment 5: P.I.I. contends that in calculating its United States price, freight included in the reported expenses incurred in Brazil should not be deducted since it relates to the acquisition of the merchandise, not delivery to the point of exportation.

DOC Response: The freight expenses reflected costs incurred in acquiring the ethanol which were not included in the acquisition price. Therefore, these costs were deducted only in the calculation of sales below acquisition costs.

Comment 6: P.I.I. argues that the deduction of the special tariff on ethanol in determining whether prices obtained on U.S. sales covered acquisition costs and selling expenses and in the calculation of the exporter's sales price is inappropriate since the tariff was imposed in contravention of the General Agreement on Tariffs and Trade (GATT) and is the subject of compensation in the form of a reduced U.S. tariff on canned corned beef from Brazil.

DOC Response: The Department is required to subtract from the exporter's sales price any United States import duties incident to bringing the merchandise from the place of shipment to the place of delivery in the United States. 19 U.S.C. 1677a(d)(2). As this duty is a cost incurred by P.I.I. in selling the merchandise which has not been reduced by revenues received by P.I.I. from any other source, the Department has deducted the full amount in accordance with the statute. With respect to the respondent's concerns regarding the legality of the United States tariff, the Department does not have the authority, nor is an antidumping duty investigation under the Act an appropriate forum, to make such a legal determination.

Comment 7: P.I.I. argues that in determining whether its sales to the United States have been at prices above acquisition costs plus expenses, the Department should determine whether costs have been recovered over a reasonable period of time. P.I.I. claims that any short term analysis is invalid since ethanol prices are tied to those of gasoline and are therefore not set by the seller. P.I.I. bases its argument on the statutory language of section 773(b) of the Act which sets the parameters for determining whether home market sales are made at prices which were less than the cost of production.

DOC Response: The Department finds that the period of investigation provides a reasonable period of time during which to determine whether P.I.I. recovers its costs of acquisition plus expenses on its sales of ethanol to the United States. We do not find evidence that any relationship between the prices for ethanol, the prices for gasoline and the alcohol crop year requires a larger investigatory period before costs can be recovered. Therefore, using the parameters of section 773(b) of the Act, P.I.I. has not recovered its costs of acquisition plus expenses over a reasonable period of time.

Comment 8: P.I.I. argues that if fair value comparisons are made at the P.I.I. level, Petrobras' home market prices cannot be used in determining foreign market value since they are unrelated to the real value of fuel ethanol sold in Brazil. This argument is based on the fact that the ethanol market in Brazil is completely controlled by the government.

DOC Response: We are not persuaded that Petrobras' home market prices are an inappropriate basis for calculating foreign market value. Its sales are in the ordinary course of trade and government price controls do not invalidate these prices for fair value comparisons. Thus, where we did not use CNP prices for foreign market value it was because those prices were below the cost of production.

Comment 9: P.I.I. argues that when converting cruzeiro-based costs for purposes of determining exporter's sales price, foreign market value, and acquisition price and expenses, in a trading company dumping determination, the Department must use the rate in effect on the date of sale to the United States. It is asserted that the use of different rates of conversion for P.I.I.'s costs is by itself responsible for the finding of trading company dumping.

DOC Response: We disagree. For ESP and FMV calculations the Department uses a conversion rate based on the date

of sale to the United States. However, neither of these calculations are designed to evaluate whether an exporter is selling above acquisition cost plus expenses for purposes of trading company dumping. See Response to Petitioners' Comment 4.

Comment 10: P.I.I. argues that if foreign market value is based on the CNP price charged by Petrobras, certain deductions should be made for elements of the price which are unrelated to the value of fuel ethanol. These deductions include proceeds maintained for the account of the CNP, the costs of maintaining excess inventory, taxes, and certain freight costs. P.I.I. would have the CNP fund treated as a federal tax requiring an addition to the United States price for the amount of the fund, or as a direct expense for which a circumstance of sales adjustment is required.

DOC Response: Since foreign market value for P.I.I. was based on constructed value, issues pertaining to the CNP price and adjustments thereto are moot.

Comment 11: Copersucar argues that its foreign market value must be determined on the basis of the price in effect on the date of the U.S. sale to which it is being compared rather than prices in effect throughout the month of sale since there were significant price increases between the dates of sale to the United States and the end of the month.

DOC Response: Because we found Copersucar's home market prices to be below cost in months where U.S. sales occurred, we based foreign market value on constructed value during the month of the sale to the trading company for export to the United States.

Comment 12: Copersucar argues that the costs related to home market inventory should be treated as directly related, post sale expenses since home market prices, production levels and delivery terms are set prior to production.

DOC Response: We have determined the date of invoicing to be the date of sale. Therefore, the inventory costs incurred prior to invoicing cannot be considered directly related to the sales in question.

Comment 13: Copersucar claims that inventory carrying costs incurred relative to U.S. sales are not directly related to sales since there are no requirements in the contracts to hold inventory.

DOC Response: We agree and have no adjustment.

Comment 14: Copersucar argues that the entire amount of a January 1985 sale should be included in our analysis even though a substantial portion of the ethanol was delivered after the period of investigation because all of the ethanol was included in a single contract and because payment for a large portion of the ethanol was made prior to delivery.

DOC Response: This sale was excluded in our calculation of Copersucar's margin, because it was a sale to Interbras (see Petitioners' Comment 10).

Comment 15: Copersucar argues that the Department should compare home market prices to production costs by matching monthly production costs to the sale prices in the months in which that production was actually sold since there is often a two or three month lag between production and sale.

DOC Response: We disagree. In a hyper-inflationary economy such as Brazil, we match prices with costs incurred in the month of sale as the most accurate way to compare equivalent currency values. We have done so for purposes of this determination.

Comment 16: Copersucar argues that the Department should accept the production costs reported by the distillers and the methodologies used by them because they are reasonable, consistent with company practices and financial statements, and are not contrary to methodologies employed by the Department in dealing with hyper-inflationary economies.

DOC Response: After analysis of the companies' accounting practices, the Department made adjustments to certain costs to reflect the effects of inflation, and also to allocation methods so as to account for the additional costs attributable to anhydrous ethanol.

Comment 17: Copersucar contends that the Department improperly included ethanol blends in the scope of the investigation because they were not included in the scope of the petition and they have not been investigated.

DOC Response: The Department has the authority not only to define the scope but also to clarify the statement of scope of an investigation. *See Royal Business Machines* v. *United States* 1 CIT 80 (1980), AFFD, 669 F.2d 692 (Fed. Cir. 1982). The Department has determined that certain fuel-grade ethanol blends are the same class or kind of merchandise as fuel grade ethanol. Further, the statute does not require the Department to make price comparisons on all types of merchandise within the class or kind that are subject to an investigation. *See, e.g.*, Large Power Transformers from France (47 FR 10268). Therefore, the Department properly included certain ethanol blends within the scope of the investigation.

Comment 18: I.A.T. argues that the Department erred in only considering two of its four sales to third countries for purposes of the preliminary determination.

DOC Response: Since we did not use I.A.T.'s data for purposes of this determination, the issue is moot.

Comment 19: I.A.T. argues that its United States prices should be increased in order to reflect revenues received from the Government of Brazil under the I.P.I. credit premium program.

DOC Response: Since we did not use I.A.T.'s data for purposes of this determination, the issue is moot.

Comment 20: I.A.T. argues that, due to unusual circumstances of its sales activities, the Department should use a more liberal standard than normal for determining whether less than fair value margins are *de minimis*. This claim is based on uncertainties involved in comparisons of similar rather than identical merchandise.

DOC Response: Since we did not use I.A.T.'s sales for purposes of this determination, the issue is moot.

Comment 21: I.A.T. argues that the Department should use a weighted-average United States price since the total safety margin on one sale is greater that the total margin on the other U.S. sales.

DOC Response: Since we did not use I.A.T.'s sales for purposes of this determination, the issue is moot.

Comment 22: I.A.T. contends that the Department should not use the constructed value of its suppliers as the basis for calculating I.A.T.'s foreign market value because I.A.T.'s suppliers did not know and could not have known anhydrous ethanol sold to I.A.T. was destined for the United States.

DOC Response: We have determined on the basis of our current knowledge of the ethanol market, including I.A.T.'s commercial activities, that the distillers supplying the trading companies knew or should have known the destination of the anhydrous fuel ethanol at the time of the sale to the trading companies during our review period. Therefore, we determined that fair value comparisons should be made at the distiller level.

Comment 23: Costa Pinto argues that the Department erred in using the acquisition cost of fuel ethanol as the basis of constructed value for Matarazzo, a trading company which only had sales to the United States during the period of investigation. Instead, Costa Pinto contends that the constructed value should be based on cost of production information provided by Copersucar, which is a respondent in this investigation, instead of the acquisition cost.

DOC Response: Since we did not make fair value comparisons for Matarazzo for purposes of this determination, the issue is moot.

Comment 24: Costa Pinto and Cotia contend that the Department erred in not considering their voluntary response since the information which was not provided, acquisition costs, is not relevant to the investigation and since Costa Pinto was not notified of the response deficiencies.

DOC Reponse. See our response to Petitioners' Comment 25.

Comment 25: Costa Pinto argues that since its response was corrected in time to permit verification, the Department is obligated to consider the response for purposes of this final determination.

DOC Response: See our response to Petitioners' Comment 25.

Comment 26: Costa Pinto argues that if the Department does not verify its response, documents supplied for the record should form the basis of the best information available concerning Costa Pinto's selling practices.

DOC Response: See our response to Petitioners' Comment 25.

Comment 27: Cotia contends that the Department erred in not requiring it to respond to the questionnaire in this investigation since it is historically a substantial exporter of fuel ethanol to the United States and it had informed the Department that its suppliers did not know the destination of the merchandise.

DOC Response: See our response to Petitioners' Comment 25.

Comment 28: Costa Pinto and Cotia contend that information obtained from Interbras should not be used to calculate the weighted-average margin used as the "all others" rate because it would be improper to spread the impact of trading company dumping beyond the actual trading company involved since such behavior is so unusual and only Interbras is the subject of exporter's sales price analysis.

DOC Response: It is our standard practice to use all affirmative rates in calculating the "all other" rate because this weighted average is the best approximation of the behavior of investigated and non-investigated firms. To the extent that other exporters have behaved differently from P.I.I., that will be reflected in actual antidumping duty assessment.

Verification

As provided in section 776(a) of the Act, we verified all the information provided by respondents by using standard verification procedures, including examination of relevant sales and accounting records of the companies.

Final Negative Determination of Critical Circumstances

The petitioner alleged that imports of fuel ethanol from Brazil present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when (1) there is a history of dumping in the United States, or elsewhere, of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise, which is the subject of the investigation, at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above average imports calculated over the last three years.

Based on our analysis of these factors, we have determined that imports of fuel ethanol from Brazil were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of fuel ethanol, or whether the person by whom or for whose account this product was imported knew or should have known that the exporter were selling this product at less than fair value.

We have determined, for the reasons described above, that "critical circumstances" do not exist with respect to fuel ethanol from Brazil.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Petrobras Comercio International S.A. (Interbras)	101.12
Copersucar	56.48
All others	98.61

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination of fuel ethanol from Brazil, we found export subsidies (51 FR 33611). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

ITC Notification

In accordance with section 735(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on fuel ethanol from Brazil entered, or withdrawn from

warehouse, from consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: February 7, 1986.

Paul Freedenberg

Assistant Secretary for Trade Administration.

[FR Doc. 86-3288 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-501]

Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China (PRC)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce (the Department) and the United States International Trade commission (the ITC) have determined that natural bristle paint brushes and brush heads from the PRC are being sold at less than fair value and that an industry in the United States is threatened with material injury by reason of imports of this merchandise from the PRC. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after the date of publication of this antidumping duty order in the **Federal Register**, will be liable for the assessment of antidumping duties. Further, a cash deposit or estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288.

SUPPLEMENTAL INFORMATION: The products covered by this investigation are natural bristle paint brushes and brush heads as currently provided for in item 750.65 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on July 29, 1985, the Department issued its preliminary determination that there was reason to believe or suspect that natural bristle paint brushes and brush heads from the PRC were being sold in the United States at less than fair value (50 FR 31636). On December 18, 1985, the Department issued its final determination that these imports were being sold at less than fair value (50 FR 52814).

On January 29, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that imports of natural bristle paint brushes and brush heads from the PRC are threatening to materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to 127.07 percent, the amount by which the foreign market value of the merchandise exceeds the United states price for all entries of natural bristle paint brushes and brush heads from the PRC.

Because the ITC determined that imports of natural bristle paint brushes and brush heads from the PRC are threatening to materially injure, rather than materially injuring, a U.S. industry, these antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are directing United States Customs officers to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before this antidumping duty order was published in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must collect on all entries, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 127.07 percent.

This determination constitutes an antidumping order with respect to natural bristle paint brushes and brush heads from the PRC pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Dated: February 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-3289 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act.

Time and place: March 4, 1986, 9:30 a.m., the Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Remarks by Deputy Assistant Secretary Walter Olson on the TAC role in DOC for 1986.
4. Discussion of TAC goals for 1986.
5. Video tape technical regulations and decontrol.
6. Discussion of the letter to the Committee from the Deputy Assistant Secretary dated 12/23/85 regarding the changes in policy and procedure for 1565A.
7. Additional commodities for decontrol.
8. New membership issues.
9. Election of subcommittee chairmen.
10. Discussion of attendance by DOD.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the committee to the public on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes call 202–377–2583.

Dated: February 11, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–3356 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-DT-M

[C-791-008]

Steel Wire Rope From South Africa; Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On December 13, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on steel wire rope from South Africa and announced its tentative determination to terminate the suspended investigation. The review covers the period from January 1, 1984.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are determining the suspended investigation. In accordance with the petitioner's notification, the termination will apply to all steel wire rope entered, or withdrawn from warehouse, for consumption on or after January 1, 1984.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 50930) the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on steel wire rope from South Africa (47 FR 54130, December 1, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of South Arfican steel wire rope. Such merchandise is currently classifiable under items 642.1200, 642.16154, 642.16520, and 642.1650 of the Tariff Schedules of the United States Annotated. The review covers the period from January 1, 1984.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determined that the domestic interested parties are no longer interested in continuation of the suspended countervailing duty investigation on steel wire rope from South Africa and that the investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on steel wire rope from South Africa effective January 1, 1984.

This administrative review and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: February 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–3290 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Advisory Committee for International Legal Metrology; Notice of Open Meeting

The Advisory Committee for International Legal Metrology will meet from 9:30 a.m. to 5:00 p.m. on Tuesday, March 18, 1986. The meeting will be held in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland.

The Committee, initially established in March 1974 (39 FR 6136), advises the Department, through the Director of the National Bureau of Standards (NBS), on technical and policy matters relating to NBS' assigned general responsibilities for the development of U.S. positions on technical issues arising in the International Organization of Legal Metrology (OIML). The Committee consists of approximately 40 members selected to ensure balanced representation among government, professional metrologists, national standards bodies, industry trade associations, and consumers.

The purpose of the March meeting of the Committee is to recommend U.S. positions for the 21st Meeting of the International Committee of Legal Metrology (CIML) to be held April 16–18, 1986, in Paris, France.

The following items are on the agenda:

1. Report on ACILM Status and Changes Since Last Meeting.
2. Preparations for 21st Meeting of the International Committee of Legal Metrology (CIML).
   a. Report on OIML Financial Situation.
   b. Report on Pilot Secretariat Program Plans for 1986–88 Period.
   —New Projects
   —Priorities
   —Potential Impact on United States
   c. Discussion of Program Plans for U.S. Administered Pilot/Reporting Secretariats for 1986–88 Period.
   d. Report on Draft International Recommendations/Documents to be Submitted to the CIML.
   —"Electronic Weighing Instruments"
   —"General Requirements for Electronic Measuring Instruments"
   —Other Drafts
   e. Report on Progress towards OIML Certification System.
3. Report on the Planned Meeting of ISO TAG 4 Metrology.
4. Other Business.

The meeting will be open for public observation, and a period will be set aside for oral comments or questions by the public which do not exceed ten minutes each. More extensive questions or comments should be submitted in

writing before March 10, 1986. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Committee Control Officer, Standards Management Program, Office of Product Standards Policy, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301–921–3287.

Dated: February 11, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–3283 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–13–M

National Voluntary Laboratory Accreditation Program; Program Establishment

AGENCY: National Bureau of Standards, Commerce.

ACTION: Request for comments on need for establishing a laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has received a request to establish a laboratory accreditation program (LAP) under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). In a letter dated January 6, 1986, Walter C. McCrone Associates, Inc., Chicago, Illinois, requested that NBS establish a LAP for asbestos abatement testing. A copy of the request letter is set out as an appendix to this notice. Announcement of this request by Walter C. McCrone Associates, Inc., and of the NBS request for comments with respect thereto are being made under § 7.11(d) of the referenced procedures.

ADDRESS: Persons desiring to comment on the need for such a LAP are invited to submit their comments in writing on or before April 15, 1986 to the Director, Office of Product Standards Policy, National Bureau of Standards, ADMIN A 603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Peter Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A 531, Gaithersburg, MD 20899; phone (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Scope of LAP

The requestor identified three test procedures required in association with asbestos abatement operations as the scope of the proposed LAP: (1) Determination of whether material contains asbestos; (2) Monitoring of airborne levels of asbestos during an asbestos abatement operation, and (3) Following an asbestos abatement operation, the clearance monitoring procedure. The requestor indicated that the methodology is referenced in regulations of the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration.

Procedure Following Receipt of Comments

After the 60 day comment period, NBS will thoroughly evaluate all comments pertaining to the proposed LAP and will notify all interested persons (those who submit comments or request to be placed on the NVLAP mailing list) of the decision, by the Director of NBS, regarding development of this LAP. If the decision is made to develop the LAP, technical assistance will be sought from all interested parties to develop the technical requirements for assessing applicants and establishing appropriate proficiency testing programs.

Documents in Public Record

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: February 11, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Appendix

January 6, 1986.

Director,

National Bureau of Standards, ADMIN A1134, Gaithersburg, MD 20899

Dear Sir:

RE: Request for Lab Accreditation Programs.

Your attention is drawn to an area in which laboratory accreditation programs would be both useful and relevant. This area is the area of the abatement of asbestos in buildings. The test procedures required in association with such abatement operations are: firstly, the identification of asbestos in building materials and, secondly, the monitoring or determination of asbestos during and immediately following asbestos abatement operations. It is conceivable that two or possibly even three laboratory accreditation programs may be required in these areas.

Background

Asbestos-containing materials found widespread use in buildings in a variety of building products. The Environmental Protection Agency has determined that airborne asbestos contamination in buildings is a significant environmental problem (EPA 560/5–85–024: Guidance for Controlling Asbestos-Containing materials in Buildings). Surveys conducted by the Environmental Protection Agency estimate that asbestos-containing materials can be found in approximately 31,000 schools and 733,000 other public and commercial buildings in the United States. As a result, considerable industry has developed around the control of asbestos contamination in buildings. Laboratory testing associated with this abatement work takes place at several stages.

(A) Prior to any asbestos abatement operation it is necessary to determine whether material present in a building does, indeed, contain asbestos. EPA, in its regulations for identifying friable asbestos-containing materials in schools (40 CFR 763; 47 FR 23360, May 27, 1982; 47 FR 38535, September 1, 1982) describes an interim method for the determination of asbestos in bulk insulation samples. This procedure is split into two sections; polarized light microsopy and x-ray diffraction. At the present time, there is no accreditation procedure for such analyses. EPA sponsors a round-robin testing program administered by Research Triangle Institute in which four samples are submitted to participating laboratories every three months and the results are tabulated. It is in no way, however, a certification or accreditation program. The last series of such tests resulted in the participation of 307 commercial laboratories and 119 non-commercial laboratories—an increase of 74 commercial and 29 non-commercial laboratories over the number which participated in the previous three months. This is, thus, an area in which the number of participating laboratories is experiencing a very rapid growth.

(B) During an asbestos abatement operation, OSHA requires the monitoring of airborne levels of asbestos to which workers might be exposed. This procedure involves collecting air samples on a membrane filter and analyzing by a microscopical technique. The American Industrial Hygiene Association administers a NIOSH-sponsored proficiency assurance testing (PAT) program for laboratories engaged in the analysis of such filters and AIHA's laboratory accreditation program includes accreditation for asbestos analysis. It should be pointed out, however, that such accreditation does not extend beyond the physical confines of the laboratory and is, therefore, not relevant to field sampling or to the field analyses which are so commonly carried out during asbestos abatement operations.

In addition to the OSHA requirements, the EPA has advised that area sampling should be performed during the work operation, both inside and outside the work area, in order to determine the potential (or the actual) contamination of surrounding areas due to failure of containment barriers.

(C) Following an asbestos abatement operation, the mechanism by which a contractor may be released from site is the so-called clearance monitoring procedure. At the present moment, both phase contrast microscopy as performed for OSHA compliance and an electron microscopical method are in use. EPA's most recent documentation (referenced above) suggests that the transmission electron microscopical method should be used in all areas where it is considered essential to determine that even the finest fibers (those below the resolution limit of the light microscope) should be measured. The EPA has published a methodology for such electron microscopical analysis (USEPA–600/2–77–178: Electron Microscope Measurement of Airborne Asbestos Concentrations). In addition, a draft of a report revising this methodology has been prepared in 1984 under EPA Contract No. 68–02–3266. At the present time, there is no quality assurance program of proficiency testing program in this area, although the National Bureau of Standards has prepared a standard reference material (SRM 1876). Currently, there are probably less than 20 laboratories in the country who have the combination of equipment and expertise to perform such analyses. There are, however, many analytical electron microscopes available which could be used for such techniques, and it is likely that the number of laboratories offering this service will increase as dramatically as the number of laboratories offering polarized light microscopy and phase contrast microscopy services. At the present time, however, there are no training programs available for such TEM analysis comparable to those programs which are offerred in the area of asbestos identification and phase contrast monitoring. There is, thus, clearly a need for some quality control measures in this area.

In summary, then, the growth of activity in the area of abatement of asbestos-containing materials in buildings has placed a burden on the analytical community to provide competent analytical services in. (A) the identification of asbestos-containing materials, (B) the monitoring of air quality during and immediately following asbestos abatement operations by the techniques of (1) Phase Contrast Microscopy, and (2) Transmission Electron Microscopy. This need is nationwide and is spurred by the activities of the Environmental Protection Agency and a growing public consciousness of a need for improvements in indoor air quality. At the present time, over 400 laboratories participate in the EPA-sponsored voluntary round-robin program for asbestos identification materials. It is not known how many additional laboratories are involved in this activity but do not participate in this program. About 350 laboratories participate in the voluntary proficiency assurance testing program administered by the American Industrial Hygiene Association. No program exists for quality assurance testing of laboratories engaged in electron microscopical determination of asbestos.

I believe there is a clear need for LAPs in the areas referenced in this letter. In a telephone discussion with Ms. Susan Vogt, Director of the Environmental Protection Agency's Asbestos Action Program, I discussed with her the NVLAP program (of which she was not aware) and she has indicated an EPA interest in such a program for asbestos. It is likely that Ms. Vogt will be contacting you directly on this subject. I believe the establishment of LAPs in the areas indicated would fill a national need and would be a significant contribution to environmental health monitoring.

McCrone Environmental Services, Inc. would be pleased to assist the National Bureau of Standards with technical assistance in the development of an asbestos-related LAP.

Yours sincerely,

Ian M. Stewart,

Vice President.

[FR Doc. 86–3281 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–13–M

National Voluntary Laboratory Accreditation Program; Hazardous Waste Analysis

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of decision regarding a hazardous waste laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has decided to postpone indefinitely the development, under the National Voluntary Laboratory Accreditation Program (NVLAP), of a laboratory accreditation program (LAP) for laboratories that perform hazardous waste analysis. The decision is in response to a written request from the U.S. Environmental Protection Agency (EPA).

FOR FURTHER INFORMATION CONTACT: Peter S. Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, Admin A531, Gaithersburg, MD 20899, (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Background

NBS has decided to postpone indefinitely the development of a hazardous waste laboratory accreditation program. This action is being taken in response to a letter from Donald J. Ehreth, Acting Assistant Administrator for Research and Development, EPA, dated December 18, 1985. The letter requests NBS to "postpone its acceptance of the petition to evaluate and accredit hazardous waste and other laboratories until we (EPA) have determined the current needs of all EPA programs relative to laboratory accreditation."

NBS had previously received a request for this LPA from the State of Indiana Environmental Management Board in August 1984 and had requested comments on the need for a LAP in the **Federal Register** on February 20, 1985 (50 FR 7095–7096). Comments were originally due by April 22, 1985, but in response to an EPA request to extent the comment preiod, written comments were accepted through October 1985.

Documents in Public Record

Copies of the comment letters, including the EPA letter of December 18, 1985, are available for review and copying at the NBS Records Inspection Facility in the Administration Building, Room E106, Gaithersburg, Maryland.

Dated: February 11, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–3282 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the City of Hudson, New York, from Objection of the New York State Department of State

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice of Appeal Dismissal.

SUMMARY: On August 6, 1984, the Secretary of Commerce (Secretary) received an appeal by the City of Hudson, New York (Appellant), from an objection by the New York State Department of State (Department) to the Appellant's application for a federal Department of Housing and Urban Development Action Grant (UDAG) to construct an octane petroleum recovery and finishing facility in the South Bay waterfront area of the City of Hudson. The appeal was filed pursuant to section 307(d) of the Coastal Zone Management Act of 1972, as amended, (CZMA), 16 U.S.C. 1456(d), and implementing regulations at 15 CFR Part 930 Subpart H. Notice of the appeal was published at 49 FR 33303 (1984). The Secretary granted the Appellant's request of November 5, 1984, for an indefinite stay of consideration of the appeal pending negotiations between the parties to resolve the Department's consistency objection (49 FR 46349) (1984).

By letter of September 17, 1985, to the NOAA Office of General Counsel, Appellant requested dismissal of its consistency appeal, because it no longer wished to pursue the project and because the UDAG had been terminated by the Department of Housing and

Urban Development. No objection to the dismissal was filed by the Department.

On January 2, 1986, the Secretary of Commerce dismissed the City of Hudson's appeal in light of the disposal of the underlying controversy.

FOR FURTHER INFORMATION CONTACT: Tony Giedt, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Ave., NW., Washington, DC 20235; (202/254–7512).

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration]

Dated: February 7, 1986.

James W. Brennan,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–3274 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-08-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's workgroup on Gulf of Alaska groundfish will convene a public meeting, February 27–28, 1986, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, Seattle, WA, to review goals and objectives for the Gulf of Alaska groundfish fishery. The workgroup also may meet with the Plan Team on the revision of the Gulf of Alaska Groundfish Fishery Management Plan. For further information contact Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: February 10, 1986.

Rickard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86–3275 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish/Seamount Groundfish Plan Development Team will convene a public meeting, February 14, 1986 at 9 a.m., at the Council's Office, 1164 Bishop Street, Room 1405, Honolulu, HI, to: (1) Review the final draft of the combined fishery management plan/environmental assessment and regulatory impact review for the bottomfish and seamount groundfish fisheries of the Western Pacific Region, (2) discuss the need for access limitation in the bottomfish fishery of the Northwestern Hawaiian Islands, as well as to discuss other Team business. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 10, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–3276 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at Room 532, 2033 K Street NW., Washington, DC 20581, on February 28, 1986 beginning at 9:30 a.m. and lasting until 4:00 p.m. The agenda will consist of.

Agenda

1. Welcoming Remarks—Susan M. Phillips, Chairman, CFTC.
2. Discussion of CFTC Reauthorization.
3. Discussion of CFTC "Audit Trail" rules.
4. Discussion of CFTC Proposed Financial Rules Amendments.
5. Status Report on Proposed Expansion Of Agricultural Options Pilot Program.
6. Discussion of Minimum Price Guarantee Contracts.
7. Discussion of Other Issues for Potential Committee Consideration; Timing of Next Meeting; Other Committee Business.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the June 4, 1985 first renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Conrad in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on February 11, 1986.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 86–3328 Filed 2–13–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Strategic Defense and Naval Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Defense and Naval Warefare Task Force will meet March 4 and 7, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the

Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 11, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–3293 Filed 2–13–86; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet March 5–6, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review key issues related to Navy fleet operations. The entire agenda for the meeting will consist of discussions of key issues related to national security policy and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia. Phone (703) 756–1205.

Dated: February 11, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 3294 Filed 2–13–86; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on March 6, 1986, at the Office of the Chief Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 A.M. and terminate at 4:00 P.M. on March 6. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide update briefings for the Committee members on maritime strategy, weapons systems and Technology Base management. The agenda for the meeting will consist of briefings on naval maritime strategy, the MK 46 torpedo and Navy Technology Base management. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code 00NR), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 11, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–3295 Filed 2–13–86; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Continuing Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a Council meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 6–7, 1986.

ADDRESS: The Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC 20036, Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(1) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council will meet from 9:00 a.m. to 5:00 p.m. on March 6, and from 9:00 a.m. to 12:00 Noon on March 7, 1986.

The proposed agenda includes:

—Plans for 1986 activities
—Discussion of program coordination and partnerships
—Legislative update
—Review of NACCE/OECD Conference Report
—Update of inventory of federal continuing education and training programs
—Other business.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC.

Signed at Washington, DC, on February 7, 1986.

William G. Shannon,

Executive Director.

[FR Doc. 86-3340 Filed 2-13-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Arrangements; Switzerland Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement."

The proposed subsequent arrangement involves the loan, for two to three years of approximately 3,000 kilograms of uranium depleted in the isotope uranium-235, for use as absorption material for a high energy physics experiment at the CERN facility, Geneva, Switzerland, under Contract Number WC-SD-22.

In accordance with sections 62 and 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the interests of the United States or to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: February 10, 1986.

R. Sean Randolph,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 86-3273 Filed 2-13-86; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Proposed Funding of the Tumwater Dam and Dryden Dam Fish Passage Projects; Finding of No Significant Impact

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of a finding of no significant impact (FONSI) for Bonneville Power Administration's (BPA's) proposed funding of the Tumwater Dam and Dryden Dam Fish Passage Projects.

SUMMARY: BPA proposes to fund the design and construction of new fish ladders at both Tumwater Dam and Dryden Dam which are located 12 miles apart on the Wenatchee River in central Washington. The Chelan County Public Utilities District (PUD) will provide operation and maintenance of the proposed fish passage facilities. The project will partially mitigate the effects of past hydroelectric dams upon anadromous fish passage. The project has been included in the Northwest Power Planning Council's 1984 Columbia River Basin Fish and Wildlife Program, section 604(C)(3). BPA is authorized by the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Pub. L. 96-501) to use BPA funds for such purposes.

BPA has prepared an Environmental Assessment (EA) to assess the environmental effects associated with the construction of the Tumwater Dam and Dryden Dam Fish Passage Project. Alternatives to the proposed action that were evaluated and then dismissed were: (1) Construction of righ and left bank fish ladders at Tumwater Dam; (2) four different fish ladder designs at the Tumwater Dam and Dryden Dam sites; and (3) a no-action alternative (see pages 9-11 of the EA). For further discussion of the purpose and need for the project, see pages 2-3 of the EA.

SUPPLEMENTARY INFORMATION: The following discussion describes why the proposed action will not have a significant effect on the existing environment:

1. The construction of new fish ladders at both dams will have minor short-term effects on fish. Construction will take place during periods of low flow and limited fish migration to avoid interfering with fish passage over both dams. Temporary fish passage will be provided by installing a weir and pool-type fish ladder at the Dryden site, and by installing a denil-type fish ladder at the Tumwater site. This temporary fish passage over both dams will minimize any delay that could occur to adult fish attempting to migrate upstream past the facilities during construction.

Impacts to fish will not be significant because of timing of construction to avoid periods of heavy migration. Temporary rerouting of fish around the area of construction will eliminate any delay that could occur to migrating adults during this time.

2. The project may be temporarily increase water turbidity and may release minor amounts of sediments to the streambed downstream of the dams during the construction period. The small amount of sediment that may be temporarily released into the Wenatchee River system will not be significant because of the following. Sediment will be controlled by dewatering the fish ladder areas prior to construction through the use of cofferdams and placement of non-erodable waterproof membrane on the outside of the cofferdams. This will isolate construction activities from the Wenatchee River. Construction will be timed to avoid high water conditions. Streamside areas disturbed during the construction period will be restabilized and revegetated.

3. In consultation with the Chelan County Planning Commission the proposed facilities will occupy sites where similar uses currently apply. Therefore, the project will be consistent and compatible with the existing comprehensive plans for Chelan County. The Washington State Department of Ecology was contacted and it was determined that the project will be consistent with state plans and programs.

4. According to a letter from the U.S. Fish and Wildlife Service (USFWS) on August 8, 1985, the bald eagle is listed as a threatened species and may occur within the project areas. The bald eagle (*Haliaeetus leucocephalus*), has been known to use the project vicinity between early November and late March. Over the past 5 years of mid-winter surveillance, 0 to 4 bald eagles have been sighted in the project vicinity. A Biological Assessment was prepared and sent to the USFWS for Formal Consultation on September 19, 1985. The USFWS responded to the Biological Assessment in an October 28, 1965, letter and concurred with BPA's finding of no effect to the bald eagle. The Biological Assessment is included as Appendix B of the Environmental Assessment.

5. The dam structures upon which the new fish ladders will be constructed may be eligible for inclusion in the "National Register of Historic Places." A Cultural Resource Assessment has been conducted for the sites (EA, Appendix C) and was submitted to the Washington State Historic Preservation Office (SHPO) on August 26, 1985. The BPA shall seek determination of eligibility for the facilities and shall mitigate any adverse project effects on the eligible structures prior to project construction.

Consultation with the SHPO has revealed that there are no other known properties listed on the "National Register of Historic Places" or the "Register of Historic Landmarks" within the area of the proposed activities. The proposed activities would not have an effect on the ceremonial rites of Native Americans.

6. The existing Tumwater Dam and Dryden Dam fish ladders are located entirely within the 100-year floodplain, as defined by the Federal Emergency Management Agency Flood Insurance Rate Maps. Alternatives which would have avoided location within the floodplain would not meet the need or the purpose for the facility (see EA, Chapter 2). Therefore, a determination has been made that there is no practicable alternative to locating the fish ladders within the Wenatchee River floodplain and that the proposed action includes all practicable measures to minimize harm to or within the floodplain. The proposed fish ladders will be concrete structures and will be designed and built to withstand damages from peak flows and to operate over a considerably wider range of flows than the present structures. Peak flows will inundate the downstream entrance pools to the fish ladder but will not damage the ladder which will be designed to withstand a 100-year flood.

The physical presence of the fish ladder in the floodplain will not alter the floodplain's physical characteristics. No adverse impacts of floods on human, safety, health, and welfare will exist due to the project because the channel discharge capacity will not be diminished nor will hazardous materials be contributed to floodwaters. Due to these factors, the proposed construction and presence of the fish ladder will not significantly affect the existing floodplains.

7. According to the National River Inventory, the Wenatchee River in the area of Tumwater Dam and Dryden Dam has "outstandingly remarkable" values, especially for recreation. No long-term alterations to these values, however, will result from project development. During construction, the interruption of recreational activities at the sites will not be significant because neither of the sites have developed or specific recreational uses where the construction will occur. At the Dryden Dam site, river rafters will not be able to float their rafts over the weir during construction; however, access will be provided for rafters to carry rafts around the construction sites. There will be no significant impact on recreation because the proposed improvements will occur at existing facilties and will produce little or no changes to the surrounding recreational values and use of the area.

8. BPA evaluated the proposal with respect to current legislation affecting Federal projects and found it to comply with those laws and regulations. (See the EA, pages 12–35.)

There will be no effect on: (a) Special recreational areas such as Wild and Scenic Rivers, National Trails, etc. (EA, page 33); (b) farmland which is designated prime or unique (EA, page 16); (c) designated wetlands (EA, pages 25); (d) air quality (EA, page 30); (e) water quality (EA, pages 27–29); (f) noise levels (EA, page 30); and (g) visual quality (EA, page 35).

Related Documents: The following documents have been prepared by BPA and Chelan County PUD and are related to the proposed project: "Tumwater Falls and Dryden Dam Fish Passage Project, Preliminary Engineering Design Report," Bonneville Power Administration; "Dryden Hydroelectric Project, Final Environmental Impact Statement," Public Utility District No. 1 of Chelan County; "Dryden Hydroelectric Project, Planning Report," Public Utility District No. 1 of Chelan County; "Tumwater Hydroelectric Project Redevelopment Proposal," Public Utility District No. 1 of Chelan County.

Public Availability: BPA distributed a preliminary copy of the EA for public review to each landowner in the area and to governmental agencies involved with the project. Copies of the EA and this finding will also be distributed to these landowners and governmental agencies. Copies of both documents are available upon request from the Environmental Manager, Bonnerville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208, telephone (503) 230–5136.

Determination: Based upon the information in this EA, the Department of Energy has determined that BPA's proposal to fund the Tumwater Dam and Dryden Dam Fish Passage facilities does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Issued in Washington, DC, January 27, 1986.

Mary Walker,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 86–3272 Filed 2–13–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Case No. CAC–001]

Energy Conservation Program for Consumer Products; Petition for Waiver of Central Air Conditioner Test Procedures From Carrier Corporation

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Carrier Corporation (Carrier) of Syracuse, New York, requesting a waiver from the existing Department of Energy (DOE) test procedures for central air conditioners. Carrier manufactures residential and commercial air conditioning appliances. The petition requests DOE to grant relief from the test procedure relating to the compressor speed specification for Carrier's 38EV/38QV model series central air conditioners (heat pumps). Carrier seeks to test using intermediate compressor speeds instead of the single speed specified. Carrier requests the test and calculation methods of Appendix B to the Air Conditioning and Refrigeration Institute Standard 210/240–84, with modifications, be substituted for the DOE test procedures for central air conditioners. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than March 17, 1986.

ADDRESSES: Written comments and statements shall be sent to Michael McCabe at the address indicated in the next section. Please label both the envelope and the comment with the following: Case No. CAC–001.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE–132, Forrestal Building, 1000 Independence Avenue, Washington, DC 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9513.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub.

L. 95–619, 92 Stat. 3266, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27, Petitions for Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64108 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures, or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Carrier's petition seeks a waiver from the DOE test provisions that require testing at a single compressor speed. Instead, Carrier requests the allowance of test and calculation procedures which incorporate test data for system operation at intermediate speeds. Specifically, Carrier requests allowance to use Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240–84 with amendments. The amendments to ARI Standard 210/240–84 requested by Carrier include revisions to cycling period, intermediate steady state test points, demand defrost credit and indoor air flow rate.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, January 31, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

December 4, 1985.

Assistance Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Re: Petition for Waiver

Gentleman: This is a petition for waiver which is being submitted pursuant to Title 10 CFR 430.27. Waiver is requested from Test Procedures for Central Air Conditioners, Including Heat Pumps found in Appendix M to Subpart B of Part 430. Waiver is requested for variable speed product model heat pumps and cooling units.

Models in the variable speed product line employ variable speed motors to drive the compressor and the indoor blower. The motors are controlled by a microprocessor and can be operated over a wide range of incremental values of speed. An "intelligent" room thermostat is linked to the microprocessor controller in the equipment. The cycling of the compressor is controlled from within the unit rather than directly by the thermostat, which leads to significantly different cyclic patterns when compared to conventional single or two speed equipment.

York demonstrated in the Application for Exception for their ENMOD system (Case BEE–1338, January 13, 1981) that the test procedures for two speed systems in 430.24 do not properly represent the seasonal performance of variable capacity systems. York was allowed to make use of a modified test and rating procedure which incorporated test data for system operation at intermediate speeds. Since then, ARI has published a rating procedure for air conditioners with variable speed compressors in Appendix B of ARI Standard 120/240–84. The ARI rating procedure is very similar to the method York was allowed to use in rating the ENMOD system, and a high level of consistency is maintained between ARI 210/240–84 and 430.24.

This petition is a request for authorization to substitute the test and calculation methods in Appendix B of Standard 210/240–84 for the test and calculation methods in Appendix M to Subpart of Part 430. In addition, it is requested that several modifications to Appendix B of 210/240–84 be included in the waiver to allow fair and proper representation of the unique operating characteristics of the equipment. The requested amendments are modifications are as follows:

1. It is requested that the cyclic test pattern of 6 minutes "on" and 24 minutes "off" for compressor operation during the cyclic heating and cyclic cooling tests be replaced by a test pattern of 12 minutes "on" and 48 minutes "off" for compressor operation (ARI Standard 210/240–84, Appendix B, Table B1, page 15, footnote 4).

It is further requested that the capacity integration period be changed from 8 minutes to 14 minutes (ARI Standard 210/240–84, Section 5.1.3.1). The microprocessor control of the equipment has a minimum run time of 12 minutes at the minimum speed, and it is not possible for an "on" period of less than 12 minutes to occur in normal operation of the equipment. Since the capacity of the variable speed equipment at minimum speed is approximately half that of a conventional single speed unit, a minimum run time of 12 minutes has the effect of maintaining the same magnitude of interior temperature fluctuations during cyclic operation as those which occur with a single speed unit with a minimum run time of 6 minutes. The effect of changing the cyclic test pattern from 6 minutes "on", 24 minutes "off" to 12 minutes "on", 48 minutes "off" is to improve the seasonal efficiency ratings by 3% for cooling and 2% for heating. Test data are available to support these efficiency rating improvements. This change in the cyclic test pattern is required to correctly account for the improved cyclic performance of the variable speed equipment.

2. The intermediate speed steady state test point for cooling is specified by temperature conditions and equipment capacity (ARI Standard 210/240–84, Appendix B, Table B1, page 15). This requires an iterative test to determine the correct speed for the equipment in order to achieve the specified capacity. No tolerances are provided, and given the discrete nature of speed settings for the equipment, it may be impossible to exactly match the required capacity. This test is unnecessarily burdensome.

It is requested that the test be specified by temperature conditions and speed, with the temperature conditions unchanged and the speed specified only as a value between the minimum and maximum values for the equipment. The capacity and power for this intermediate speed point can then be corrected with respect to outdoor dry bulb temperature using the minimum speed and maximum speed test points to find the outdoor temperature at which the equipment capacity matches the load line. The temperature, capacity and power values for this intersection are then used in the ARI interpolation equations for determining SEER. The means for correcting the intermediate speed point to determine the intersection with the load line is included as Appendix A to this waiver request.

3. There is currently no intermediate speed test point for evaluation of the heating seasonal performance factor. As a result, the ARI method has been found to underpredict the HSPF by as much as 2% when compared to more detailed bin calculations incorporating intermediate speed data. The frost accumulation test point, which is run at maximum speed is not well matched to the load line and as a result has almost no influence on the HSPF value (ARI Standard 210/210–84, Appendix B, Table B1, page 15).

It is proposed that the frost accumulation test point be an intermediate speed point. The temperature conditions will remain the same but the speed will be specified as a value between the minimum and maximum speeds for the equipment. The capacity and power for this intermediate speed point will be corrected with respect to temperature in the same manner as the intermediate speed cooling point to find the intersection with the heating load line. The interpolation procedure for heating will be modified to allow the use of an intermediate speed point in the same manner as it is in the cooling season calculations. Changing the frost accumulation test point to an intermediate speed will place the proper weighting on this test point and it will also provided a more representative measure of integrated system performance under high frost accumulation conditions.

4. ARI Standard 210/240–84 Appendix B does not provide a direct HSPF credit to systems which employ a demand defrost control. Since the HSPF calculation method for variable speed systems is substantially

different from that for single speed systems, it is not appropriate to simply increase the capacity at the frost accumulation test by 7% (Appendix M to Subpart B of Part 430, Section 5.2).

It is requested that the HSPF be increased by 4% directly and that no adjustment be made to the frost accumulation test point data. This request is based on comments published in 44 **Federal Register** 249 p 76703 (12/27/79) which reads: "Although this improvement does vary by region, analysis shows that in most areas a 4 percent improvement in the seasonal performance factor is the minimum which would be expected . . . DOE has adjusted the enhancement factor . . . in order to achieve a resultant effect of 4 percent improvement in the HSPF for units which use demand defrost."

5. ARI Standard 210/240–84 Appendix B references ANSI/ASHRAE Standard 116–1983 for definition of test conditions and test methods. While Section 8.3 of 116–1983 prescribes that the indoor air flow rate is to vary in accordance with the control system of the unit being tested, there are no instructions concerning modifications to the test procedures to allow for variation in indoor air flow rate. It is necessary to set both the air flow rate and the fan speed for intermediate fan speeds.

It is proposed that the air flow rate at fan speeds less than the maximum speed be determined using the fan laws for a fixed resistance system. The air flow rate is then given by the ratio of fan speed to maximum fan speed multiplied by air flow rate at maximum fan speed. Minimum static pressure requirements only apply when the fan is running at the maximum speed, which will normally occur at the capacity rating point.

Test data are available to support the changes in seasonal rating factors cited above and to support the use of ARI 210/240–84, Appendix B as a basis for rating the variable speed equipment. These data are confidential and can be provided on the basis they are not disclosed outside of the Department of Energy.

It is our understanding that York is no longer manufacturing the ENMOD variable speed air conditioner. We are presently unaware of any order manufacturer(s) who offer for sale in the United States air conditioners which incorporate variable speed compressors and blowers in their design.

Sincerely,

Edward A. Baily,

Director Industry Relations.

Appendix A

Modifications to ARI 210/240–84 Appendix B Interpolation Methods

1. Section 2.1, Cooling Season Performance Factor.

Intermediate Speed Performance Point.

It is necessary to determine capacity and power as a function of outdoor dry bulb temperature for the intermediate speed. These relationships can be written as:

$QV(T = QV(87) + QSLP*(T-87)$

where QV(T) is the capacity at the chosen intermediate speed as a function of outdoor dry bulb temperature (T), QV(87) is the intermediate speed capacity point (tested at 87 outdoor dry bulb), and QSLP is the capacity versus temperature slope given by:

$QSLP = 1-QWT)*QL(82)-[QL(67))/(82-67)) + QWT*((QH(95)-QH(82))/(95-82))$

$QWT = ((QV(87)-QL(87))/QH(87)-QL(87))$

where QH(95) and QH(82) are the maximum speed test point capacities, QL(82) and QL(67) are the minimum speed test point capacities, and QH(87) and QL(87) are the maximum and minimum speed capacities estimated at 87 outdoor dry bulb using the test point capacity data.

Once (QV(T) has been determined, the temperature where QV(T) and the load line intersect can be determined. This temperature, designated TVC, replaces 87 in the interpolation equations for Case II in ARI 210/240–84 Appendix B. The intermediate speed point power, EV(87), is replaced by the intermediate speed power equation evaluated at TVC. The equation for EV(T) is determined in the same manner as the equation for QV(T) by replacing capacity values with the corresponding power values.

2. Section 2.2, Heating Season Performance Factor.

Intermediate Speed Performance Point.

It is necessary to determine QV/(T) and EV(T) for the intermediate speed in heating. These equations are found in the same manner as is described above for cooling points, but the heating test conditions and temperature values are for the heating test points. Similarly, the temperature where QV(T) and the heating load line intersect, TVH, must be determined. The interpolation procedure for Case II in heating must be expanded to permit the use of the intermediate speed temperature and power value. The form of the expanded interpolation procedure for heating is the same as Case II in cooling when the intermediate speed heating point is used.

December 13, 1985.

Assistant Secretary for Conservation and Renewable Energy,

U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585

Re: *AMENDMENT TO CARRIER CORPORATION'S DECEMBER 4, 1985 PETITION FOR WAIVER*

Gentlemen: Carrier Corporation amends its Petition for Waiver from DOE Test Procedures for its variable speed air conditioners and heat pumps as follows for clarification and specificity:

(a) Substitute the following sentence for the last sentence in the first paragraph of our December 4, 1985 Petition:

Waiver is requested for Carrier Corporation's 38EV/38QV variable speed central air conditioners/heat pumps.

(b) Amend the first sentence of the second paragraph to read:

Models in the 38EV/38QV variable speed product lines employ variable speed motors to drive the compressor and the indoor blower.

(c) Insert the following paragraph between the second and third paragraphs of the Petition dated December 4, 1985:

The 38EV/38QV equipment can be tested under the Appendix M procedures but the results of such testing are not representative of the true efficiency of the equipment.

Very truly yours,

Edward A. Baily,

Director, Industry Relations.

[FR Doc. 86–3355 Filed 2–13–86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59212; FRL–2969–9]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of sixteen applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: March 3, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–59212]" and the specific TME number should be sent to: Document Control Officer (TS–793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above

address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86–12

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–13

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–14

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–15

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–16

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted benzoate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames Test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–18

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted fluorobiphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–19

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted fluorobiphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T86–20

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted fluorobiphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–21

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted propylcyclohexyl ether.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg.yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–22

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted methyl cyclohexyl ether.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–23

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted ethyl cyclohexyl ether.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–24

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted cyclohexyl butyrate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–25

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted propylcyclohexyl carboxylate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No dats submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86–26

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted pentylcyclohexyl carboxylate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No release.

T 86–27

Close of Review Period. March 20, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted propylcyclohexyl carboxylate.

Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No release.

T 86–28

Close of Review Period. March 20, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted pentylcyclohexyl carboxylate.

Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No release.

Dated: February 7, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86–3184 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59752; FRL–2970–1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86–64, 86–65, 86–66, 86–67 and 86–68; February 20, 1986.

Y 86–69, 86–70, 86–71 and 86–72; February 23, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–64

Manufacturer. Confidential.

Chemical. (S) Polymer of neopentyl glycol, 1,6-hexanediol, adipic acid, isophthalic acid, terephthalic acid, trimellitic anhydride, and butyl stannoic acid.

Use/Production. (G) Polymer for industrial metal coating. Prod. range: 19,800–380,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 3 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 20 kg/batch released to air and land. Disposal by incineration.

Y 86–65

Manufacturer. Polychrome Chemical Corporation.

Chemical. (S) Polyester polymer of tall-oil fatty acids, 1,2-benzenedicarboxylic acid, benzoic acid, 2,2-dimethyl-1,3-propanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.

Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range: 110,000–220,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–66

Manufacturer. Polychrome Chemical Corporation.

Chemical. (S) Polyester polymer of tall-oil fatty acids, 1,2-benzenedicarboxylic acid, benzoic acid and 2-ethyl-2-(hydroxy methyl)-1,3-propanediol.

Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range: 110,000–220,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–67

Manufacturer. Polychrome Chemical Corporation.

Chemical. (S) Polyester polymer of tall-oil fatty acids, 1,2-benzenedicarboxylic acid, benzoic acid and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.

Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range; 110,000–220,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–68

Importer. Hitachi Chemical Company America, Ltd.

Chemical. (G) Pyrrolidone—polyamide polymer.

Use/Import. (S) Site-limited and industrial insulation and protective film for display circuits. Import range: 30–100 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–69

Manufacturer. The Dow Chemical Company.

Chemical. (G) Crosslinked sodium acrylate copolymer.

Use/Production. (G) Intermediate in polymer manufacturing. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal.

Environmental Release/Disposal. Release to air and water. Disposal by incineration, navigable waterway and on-site wastewater treatment plant.

Y 86–70

Manufacturer. The Dow Chemical Company.

Chemical. (G) Weak acid on ion exchange resin.

Use/Production. (G) Industrial and commercial water softening. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to water. Disposal by navigable waterway and on-site wastewater treatment plant.

Y 86–71

Manufacturer. Confidential.
Chemical. (G) Polymer of alkenyl benzene and mixed alkyl ester of alkenyl carboxylic acids.
Use/Production. (G) Non-dispersive use in a formulation. Prod range: 100–200 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–72

Manufacturer. Confidential.
Chemical. (G) Polymer of mixed glycols, a terephthalate and an alkyl dicarboxylic acid.
Use/Production. (G) Non-dispersive use in a formulation. Prod. range: 3,200–250,000 kg/yr.
Toxicity Data. Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: >5,000 mg/m; Skin sensitization: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: February 7, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86–3185 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51610; FRL–2969–6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period:
P 86–466 and 86–467—April 30, 1986.
P 86–468, 86–469, 86–470, 86–471, 86–472, 86–473, 86–474, and 86–475—May 3, 1986.
P 86–476, 86–477, 86–478, 86–479, 86–480, 86–481, 86–482, 86–483, 86–484, 86–485, and 86–486—May 4, 1986.
P 86–487 and 86–488—May 5, 1986.
P 86–489, 86–490, 86–491, 86–492, 86–493, 86–494, and 86–495—May 6, 1986.
Written comments by:
P 86–466 and 86–467—March 31, 1986.
P 86–468, 86–469, 86–470, 86–471, 86–472, 86–473, 86–474, and 86–475—April 3, 1986.
P 86–476, 86–477, 86–478, 86–479, 86–480, 86–481, 86–482, 86–483, 86–848, 86–485, and 86–486—April 4, 1986.
P 86–487 and 86–488—April 5, 1986.
P 86–489, 86–490, 86–491, 86–492, 86–493, 86–494, and 86–495—April 6, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–51610]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–466

Importer. Confidential.
Chemical. (G) Hydrogen 2-[alpha(2-hydroxy-3-sulfo-5-ethenylsulfonylphenylazo)-benzilidene hydrazino]-5-substituted, cuprate, sodium salt.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicit Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; LC_{50} 48 hr (Zebra fish): 100 to 500 mg/1, 96 hr: 100 mg/1.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–467

Manufacturer. Hack Company.
Chemical. (S) Formic acid, magnesium salt.
Use/Production. (S) Industrial and commercial primary standard for magnesium (as in water hardness testing). Prod. range: 30 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. 0.75 to 5 kg/batch released to water. Disposal by publicly owned treatment works (POTW).

P 86–468

Manufacturer. Confidential.
Chemical. (G) Microgel non-aqueous dispersing.
Use/Production. (S) Industrial coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 10 workers, up to 8 hrs/da.
Environmental Release/Disposal. No data submitted.

P 86–469

Importer. Crescent Chemical Company Inc.
Chemical. (S) 2-naphthalenecarboxamide, N-(4-chloro-2-methoxy-5-methylphenyl)-3-hydroxy-, monosodium salt.
Use/Import. (S) Industrial azoic coupling component of a 2 component dyeing system. Import range: 60,000–75,000 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Slight, Eye—Moderate.
Exposure. Processing: dermal, a total of 1 worker, up to 16 hrs/yr.
Environmental Release/Disposal. No release. Disposal by wastewater treatment.

P 86–470

Importer. Crescent Chemical Company, Inc.
Chemical. (S) 2-naphthalenecarboxamide, N-(4-chloro–2,5-dimethoxyphenyl)-3-hydroxy-7-methoxy-, potassium salt.
Use/Import. (S) Industrial azoic coupling component of a 2 component dyeing system. Import range: 5,000–7,000 kg/yr.
Toxicity Data. Acute oral: <15,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant.
Exposure. Processing: dermal, a total of 1 worker, up to 16 hrs/yr.
Environmental Release/Disposal. No release. Disposal by wastewater treatment.

P 86–471

Importer. Crescent Chemical Company, Inc.

Chemical. (S) 2-hydroxy-N-(4-methoxy-2-methylphenyl)-11-H-benzo[a]-carbazole-3-carboxamide.
Use/Import. (S) Industrial azoic coupling component of a 2 component dyeing system. Import range: 12,000–15,000 kg/yr.
Toxicity Data. Acute oral: >15 g/kg; Irritation: Skin—Nonirritant, Eye—Moderate.
Exposure. Processing: dermal, a total of 1 worker, up to 16 hrs/yr.
Environmental Release/Disposal. No release. Disposal by wastewater treatment.

P 86–472

Importer. Nuodex, Incorporated.
Chemical. (G) Copolyamide from dibasic acid, diamine and C_{12}-lactam.
Use/Import. (G) Industrial hot melt adhesive. Import range: 10,000–30,000 kg/yr.
Toxicity Data. Acute oral: >10,000 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–473

Importer. Confidential.
Chemical. (G) t-amyl peroxy mono carbonate.
Use/Import. Polymerization initiator (curing agent) for unsaturated polyester resins. Import range: Confidential.
Toxicity Data. No data Submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–474

Importer. Peerless Photo Products, Inc.
Chemical. (G) Maleic acid, styrene, methylmethacrylate polymer.
Use/Import. (S) Industrial matting agent for photographic applications. Import range: 1,200–1,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 17 workers up to 24 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. No release.

P 86–475

Manufacturer. USM Corporation.
Chemical. (G) Polyamide.
Use/Production. (G) Adhesive, open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86–476

Manufacturer. Confidential.
Chemical. (G) Substituted ammonium carboxylate.
Use/Production. (G) Dispersive use. Prod. range; Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 33 da/yr.
Environmental Release/Disposal. Release to air or land. Disposal by land fill and Resource Conservation and Recovery Act (RCRA).

P 86–477

Importer. Confidential.
Chemical. (G) 1,4-benzenedisulfonic acid, 2,2'-[1,2-ethenediyl]bis[3-sulfo-4-phenylene]imino[6-[(disubstituted)imino]-1,2,3,5-triazine-4,2-diyl]]bis-, hexasodium salt.
Use/Import. (S) Industrial and consumer optical brightener for use in textile as liquid and powder products. Import range: Confidential.
Toxicity Data. Acute oral: 15,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Processing: dermal, a total of 2 workers.
Environmental Release/Disposal. 5 kg released to water. Disposal by POTW.

P 86–478

Importer. Confidential.
Chemical. (G) 1,4-benzenedisulfonic acid,2,2'-[2-ethenediylbis]3-sulfo-4,1-phenylene)imino-]6-disubstituted)imino]-1,2,3,5-triazine-4,2,diyl]]-bis-, hexasodium salt.
Use/Import. (S) Industrial and commercial brightener for use in paper as a liquid and powder products. Import range: Confidential.
Toxicity Data. Acute oral: Powder—11,300 mg/kg, liquid—>5,000 mg/kg; Irritation: Skin—Powder—Non-irritant, Liquid—Slight, Eye—Non-irritant; TOC 120 mg/l; LC_{50} 48 hr (Rainbow trout): >500 mg/1.
Exposure. Processing and use: dermal, inhalation and ocular, a total of 3 workers, 1 person/shift, 24 hrs/shifts.
Environmental Release/Disposal. Release to water. Disposal by sanitary landfill.

P 86–479

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl propenoates, substituted alkyl propenoates, ethenyl benzene and ethylene carboxylic acid.
Use/Production. (S) Site-limited metal coating intermediate. Prod. range: 125,000–375,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 1 hr/da, up to 25 da/yr.
Environmental Release/Disposal. None expected. Disposal by approved landfill.

P 86–480

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl propenoates and ethenyl benzene.
Use/Production. (S) Site-limited intermediate used in metal coating fomulations. Prod. range: 50,000–150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 1 hr/da, up to 20 da/yr.
Environmental Release/Disposal. No release. Disposal by approved landfill.

P 86–481

Manufacturer. Eastman Kodak Company.
Chemical. (S) N-[5-(dibutylamino)-2,4-pentadienylidene]-N-butyl-1-butanaminium hexafluoro phosphate.
Use/Production. (G) Highly controlled non-dispersive use. Prod. range: 30–40 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 4 workers, up to 0.4 hr/da, up to 4 da/yr.
Environmental Release/Disposal. No release. Less than 0.2 to 6 kg/batch incinerated.

P 86–482

Manufacturer. Eastman Kodak Company.
Chemical. (S) N-[5-(dibutylamino)-2,4-pentadienylidene]-N-butyl-1-butanaminium chloride.
Use/Production. (G) Chemical intermediate. Prod. range: 30–40 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 2 workers, up to 0.1 hr/da, up to 1 da/yr.
Environmental Release/Disposal. No release.

P 86–483

Importer. Sunrize Corporation.
Chemical. (G) Diarylaroyl phosphine oxide.
Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP part manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86–484

Importer. Sunrize Corporation.

Chemical. (G) Diarylaroyl phosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP parts manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86–485

Importer. Sunrize Corporation.

Chemical. (G) Diarylaroyl phosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP parts manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86–486

Importer. Sunrize Corporation.

Chemical. (G) Diarylaroyl phosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP parts manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86–487

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalene sulfonic acid, substituted alkyl amine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86–488

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalene sulfonic acid, sulfonic acid, salt.

Use/Production. (G) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86–489

Manufacturer. Confidential.

Chemical. (G) [(Dimethylchloro)silyl] propyl ester of a propenoic acid.

Use/Production. (G) Destructive use. Prod. range: 200–300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 5 workers.

Environmental Release/Disposal. Less than 0.01 to 1 kg released by liquid solution. Disposal by landfill.

P 86–490

Manufacturer. Confidential.

Chemical. (G) Copolymer of methacrylate esters.

Use/Production. (S) Industrial, commercial and consumer polymer for use in coatings, adhesives and inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–491

Manufacturer. Confidential.

Chemical. (G) Alkyl ether amine.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–492

Manufacturer. Confidential.

Chemical. (G) Alkyl ether amine.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–493

Manufacturer. Rexnord, Inc.

Chemical. (G) Oxazolidine.

Use/Production. (S) Site-limited and industrial reactive additive to eliminate bubbling in moisture cure urethane coating and sealants. Prod. range; Confidenital.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 1 to 10 kg/batch released to land. Disposal by licensed burial.

P 86–494

Manufacturer. Confidential.

Chemical. (G) Aryl alkyl ketone.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86–495

Manufacturer. Confidential.

Chemical. (G) Aryl alkyl ketone.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

Dated: February 7, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86–3186 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

[Docket No. ER–FRL–2970–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 27, 1986 through January 31, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 1986 (51 FR 4804).

Draft EISs

ERP No. DS–AFS–D65010–00, Rating LO, George Washington Nat'l Forest, Land and Resource Mgmt. Plan, Uneven—aged Timber Mgmt. System, Additional Alternative, WV and VA. SUMMARY: EPA recommends that more detailed discussions of stream classifications, timber cutting, and fish and wildlife benefits be included in the final EIS and management plan.

ERP No. D–BLM–L70004–ID, Rating E02, Lemhi Resource Area, Resource Mgmt. Plan, ID. SUMMARY: EPA's primary concern is that water quality and beneficial uses would not be adequately protected under the EIS preferred alternative (and therefore the proposed RMP). EPA supports redesignating Alternative C as preferred, for it would better protect water quality by setting more specific standards for livestock forage use in riparian areas. Additionally, of the alternatives presented in the Eighteenmile Wilderness Study Area EIS, included in the RMP, only the "All Wilderness" alternative would comply with federally approved state water quality standards. EPA notes, therefore, that the Bureau of Land Management may only select the "All Wilderness" alternative for implementation at this time.

ERP No. D–COE–D39008–00, Rating EC1, Hydrilla Mgmt. and Control in the Potomac R. and Tributaries, Chain Bridge to the US 301 Bridge, District of Columbia, MD, and VA. SUMMARY: EPA has environmental concerns, but concurs with the Corps of Engineers recommendations for hydrilla control.

ERP No. D–COE–E32065–FL, Rating LO, Port Sutton Channel Navigation Improvements, Hillsborough Bay, FL. SUMMARY: EPA does not anticipate any important and or long-term adverse consequences from this action.

ERP No. D–JUS–C81010–NJ, Rating LO, Fairfield Federal Correctional Institution, Construction and Operation, NJ. SUMMARY: EPA anticipates that no significant environmental impacts will result from implementation f this project.

ERP No. D–SFW–C64001–NJ, Rating LO, Great Swamp Nat'l Wildlife Refuge, Comprehensive Mgmt. Plan, NJ. SUMMARY: Based on its review of the DEIS, EPA believes that no significant adverse environmental impacts will result from implementing the proposed master plan. However, EPA cautioned against acquiring certain areas that may contain hazardous waste sites, and suggested that the proposed long-term water quality monitoring program be modified.

Final EISs

ERP No. RF–NOA–A91053–00, Taking of Marine Mammals Associated With Tuna Purse Seining Operations, 1986 Amendments to Regulations. SUMMARY: EPA made no formal comments. EPA has no objections to the final EIS on the amendments to the regulations as proposed.

ERP No. F–NSF–A84027–00, Scientific Ocean Drilling Program, Expansion, Drilling in High Latitudes, In and Near Environmentally Sensitive Regions, On Continental Margins, and With a Riser and Blowout Prevention System. SUMMARY: EPA made no formal comments. EPA has reviewed the final EIS and has no objections to the program as proposed.

Amended Notice

The following review was completed during the week of January 13, 1986 through January 17, 1986 and should have appeared in the FR Notice published on January 31, 1986.

ERP No. F–AFS–J67004–MT, Stillwater Valley Platinum—Palladium, Mining and Milling Project, Operation Approval, Custer Nat'l Forest, MT. SUMMARY: EPA made no formal comments. The final EIS addressed EPA's concerns regarding the draft EIS.

Dated: February 11, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–3358 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2970–6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed February 3, 1986 Through February 7, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860033, Draft, COE, TN, Mill Creek Basin Flood Damage Reduction Plan, Mill and Sevenmile Creeks Dry Dam Construction and Channel Widening, Davidson and Williamson Cos., Due: April 4, 1986, Contact: Lizabeth Rhodes (615) 736–5028.

EIS No. 860034, Final, COE, ND, Lake Darling Dam Modifications, Lake Darling Flood Control Project, Souris River, Due: March 17, 1986, Contact: Wayne Knott (612) 725–7745.

EIS No. 860035, FSuppl, COE, WI, State Road and Ebner Coulees Flood Control Project, Modifications, LaCrosse County, Due: March 17, 1986, Contact: Gary Palesh (612) 725–7745.

EIS No. 860036, Draft, BLM, UT, Utah Statewide Wilderness Study Areas, Wilderness Designation, Due: June 15, 1986, Contact: Dr. Gregory Thayn (801) 524–3135.

EIS No. 860037, Final, COE, MS, Pearl River Basin Flood Control Plan, Hinds and Rankin Cos., Due: March 17, 1986, Contact: Glenn Coffee (205) 690–2729.

EIS No. 860038, Report, COE, TX, Lake Wichita-Holliday Creek Flood Control Plan, Holliday Creek Channelization, Discharge of Fill Materials, Lake Wichita Dam to Wichita River Confluence, Wichita County, Contact: Buell Atkins (918) 581–7857.

EIS No. 860039, FSuppl, COE, MS, IL, Mississippi and Illinois Rivers Pools 24, 25, and 26, Operation and Maintenance, Shoreline Management Plan for Fleeting on Pool 26, Due: March 17, 1986, Contact: Owen D. Dutt. (314) 263–5711.

EIS No. 860040, Draft, FHW, MD, MD–36 Construction, Seldom Seen Road to Buskirk Hollow Road, Allegany County, Due: March 31, 1986, Contact: Edward Terry, Jr. (301) 952–4010.

EIS No. 860041, Final FAA, MA, Barnstable Municipal Airport, Runway 15–33 Extension and Navigational Aid Installation, Barnstable County, Due: March 17, 1986, Contact: M. Ashraf Jan (617) 273–7060.

EIS No. 860042, DSuppl, COE, NJ, NY, Newark Bay and Kill Van Kull Navigation Channel Improvements, Additional Information, Aquatic Population, Sediment Quality, Hydraulic Impacts and Disposal Alternative Update, Due: March 31, 1986, Contact: Joseph Debler (212) 264–4663.

EIS No. 860043, Draft, EPA, REG, Magnetic Tape Manufacturing Industry Volatile Organic Compound Limitations, Emission Standards, Due: April 7, 1986, Contact: James Berry (919) 541–5671.

EIS No. 860044, Draft, BLM, UT, West Desert Pumping Project, Great Salt Lake Flood Control, Right-of-Way Permit, Box Elder and Tooele Cos., Due: April 22, 1986, Contact: Jack Peterson (801) 524–5348.

Amended Notice

EIS No. 86013, Draft, AFS, Santa Fe National Forest, Land and Resource Management Plan, Published FR 01–24–86—Incorrect status.

Dated: February 11, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–3359 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Community Television, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 86–45:

	File No.
Community Television, Inc..	BPET–850829KE.
Acorn Television in Action for Communities, Inc.	BPET–851018KF.

For Construction Permit, Atlanta, Georgia.

Adpoted: January 31, 1986.
Released: February 7, 1986.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new non-commercial educational television station to operate on Channel 57, Atlanta, Georgia and a petition to deny the application of Acorn Television in Action for Communities, Inc. (Acorn).

2. On November 21, 1985, a petition to deny Acorn's application was filed by Community Television, Inc., the competing applicant in this proceeding, on ground that Acorn's application was signed by its technical consultant, Anita Softness, instead of by an officer as required by § 73.3513(a)(3) of the Commission's rules. In response to the petition, Acorn filed an opposition on December 23, 1985, explaining that Ms. Softness is the Executive Director of Acorn and, as such, is an ex-officio member of the Board of Directors. Acorn, also filed a duly authenticated copy of its By-laws. While Article One, (Board of Directors), Section 1, provides that the Executive Director shall be an ex-officio member of the Board, Article Three (Officers), Section 1, provides that the officers shall be a President, Vice President, Secretary, Treasurer and Executive Director. It seems clear, therefore, that Ms. Softness is an officer of Acorn and that she can properly execute the application on behalf of the applicant. Since a pleading does not constitute an amendment of an application, Acorn will be required to amend its application, pursuant to the provisions of § 1.65 of the Commission's rules, to show, in section II, Table I, FCC Form 340, that Ms. Softness is the Executive Director and an officer of Acorn. However, since Acorn did not identify Ms. Softness as an officer in its original application and provide the information required by Table I, an appropriate issue will be specified. The petition to deny filed by Community Television, Inc. will be denied.

3. The deadline for filing applications in this proceeding was October 18, 1985 ("A" cut-off date). Acorn filed its application on October 18, 1985, with a facsimile signature. The applicant indicates that the original application was erroneously delivered by a courier service to another city. The application containing the original signature was filed on October 21, 1985. Acorn has, in effect, requested that the October 21, 1985, amendment be accepted *nunc pro tunc*. This situation is governed by a longstanding Commission policy which dictates that the signed original be accepted *nunc pro tunc*. *Bocanegra/ Gerald Broadcasting Group*, Mineo No. 1470, released December 22, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976). Accordingly, the signed original of the application will be accepted *nunc pro tunc*.

4. Section V–C, Item 10(e) of the current (May 1985) edition of FCC Form 340 requires the applicant to furnish figures for the area and population within its proposed Grade B Contour. Acorn submitted this information, but Community Television used an obsolete (January 1983) edition of the form which does not require area and population figures. Consequently, Community Television did not furnish this information. However, § 73.3511(a) of the Commission's rules requires that the proper edition of FCC forms be used. Community Television must, therefore, provide this information. The applicant will be required to furnish this information to the presiding Administrative Law Judge within 20 days after the release of the Order.

5. No determination has been reached that the tower height and location proposed by Community Television would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Community Television, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation;

2. To determine with respect to Acorn Television In Action For Communities, Inc.:

(a) Whether the applicant complied with section 73.3514(a) of the Commission's Rules in failing to identify Ms. Anita Softness as an officer in its original application; and

(b) In light of the evidence adduced pursuant to the foregoing issues, the effect of the omission on the applicant's basic or comparative qualifications.

3. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

4. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

5. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service;

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the petition to deny filed by Community Television, Inc. is denied.

9. It is further ordered, that Community Television, Inc. shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

10. It is further ordered, that Acorn Television in Action for Communities, Inc. shall file an amendment, pursuant to § 1.65 of the Rules, to show that Ms. Anita Softness is the Executive Director and an officer of Acorn, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, that the signed original application of Acorn is accepted *nunc pro tunc* as of October 18, 1985.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the

manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3253 Filed 2-13-86; 8:45 am]

BILLING CODE 6712-01-M

First Communications Group et al.; Hearing Designation Order

In re applications of MM Docket No. 86-46:

	File No.
First Communications Group.	BPCT-850823KF
Virginia L. and Frederic O. Fruits.	BPCT-851018KI
The Mad River Broadcasting Company, Inc.	BPCT-851018KH
Kathleen Bailey, d/b/a Capital Foothills Broadcasters.	BPCT-851018KP

For construction permit: Fort Bragg, California.

Adopted: January 31, 1986.

Released: February 7, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Divsion, acting pursuant to delegated authority has before it (1) the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 8, Fort Bragg, California, and (2) a petition to deny First Communications Group's (FCG) application.

2. On October 18, 1985, the Mad River Broadcasting Company, Inc. (Mad River), one of the applicants in this proceeding, filed a petition to deny the FCG application. The petition alleges that FCG's application does not contain a "certification of site availability." The petition also notes that FCG does not provide the home addresses of the parties and that the application contains errors with respect to the location of the proposed transmitter site. Mad River's argument is that the application is patently defective and should not have been accepted for filing. Although FCG's application cannot be granted without the required certification and other information, the standard for acceptability is "substantially complete." The matters raised by Mad River are the kinds of omissions that can be corrected by minor amendment. *See, e.g., James River Broadcasting Corp.* v. *FCC*, 399 F.2d 585 (1968). The application was "substantially complete" when filed, within the meaning of § 73.3564(a). Mad River's petition, therefore, will be denied.[1]

3. Section II, Table 1, of FCC Form 301, specifically requests parties to the application to list their names and home addresses. FCG's two principals who are husband and wife, only provide a Post Office Box mailing address. Accordingly, FCG will be required to provide the home addresses of its principals to the presiding Administrative Law Judge within 20 days after this Order is released.

4. FCG lists its transmitter site coordinates in sections V-G and V-C, FCC Form 301, as 39° 41' 12" N, 123° 32' 30" W. However, the transmitter site depicted on FCG's site map are at different coordinates. Additionally, the transmitter site described on FCG's contour map is at still another set of coordinates. It appears that FCG would meet spacing requirements from any of the site coordinates. However, FCG will be required to eliminate the discrepancies by amendment to the presiding Administrative Law Judge within 20 days after the release of this Order.

5. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. FCG has not submitted such a certification. Accordingly, FCG will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. Section 73.3555(a)(3) of the Commission's Rules provides that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations. Note 5 to § 73.3555 states that "paragraphs (a)-(d) of this section will not be applied to cases involving television stations which are primarily "satellite" operations, and such cases will be considered on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest." Mad River is the permittee of unbuilt Station KREQ(TV), Arcata, California, and intends to operate the Fort Bragg station as a satellite of KREQ-TV. The predicted Grade B contours of the two proposed stations would overlap. The other applicants propose full-service operations. Accordingly, appropriate issues will be specified.

7. The application of Virginia L. and Frederic O. Fruits (Fruits) specifies a maximum visual effective radiated power of 316 kW and an antenna height above average terrain of 2,340 feet. This combination of power and height exceeds the maximum permitted by § 73.614 of the Commission's Rules. Accordingly, Fruits will be required to submit a corrective amendment to the presiding Administrative Law Judge within 20 days after this Order is released.[2]

8. Our review of Fruits' application shows that section V-C, Item 15, FCC Form 301, makes reference to an exhibit (exhibit V-4) that is missing. Accordingly, Fruits will be required to submit the exhibit as an amendment to their application, to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 56 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to any of the applicants.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that pursuant to section 309(e) of the

[1] It should be noted that elsewhere in this Order we call for amendments covering the omissions noted by Mad River.

[2] Reduction of height or power may require the submission of new engineering data such as new contour maps, new vertical tower sketch, and changed area and population figures. If so, this information must be submitted as part of the required amendment.

Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Mad River Broadcasting Company, Inc., whether circumstances exist which would make operation as a "satellite" necessary for Fort Bragg, California.

2. To determine, with respect to Mad River Broadcasting Company, Inc., whether its proposal is consistent with § 73.3555 of the Commission's Rules and, if not, whether common ownership, operation or control of Station KREQ–TV, Arcata, California, and the proposed station would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, that First Communications Group shall, within 20 days after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

13. It is further ordered, that First Communications Group shall, within 20 days after the release of this Order, file an amendment with the presiding Administrative Law Judge providing the home addresses of its principals.

14. It is further ordered, that First Communications Group shall, within 20 days after the release of this Order, file an amendment with the presiding Administrative Law Judge eliminating the discrepancies in its site coordinates as discussed in paragraph 4, supra.

15. It is further ordered, that Virginia L. and Frederic O. Fruits shall submit and amendment to show compliance with § 73.614 of the Commission's Rules pertaining to power and antenna height above average terrain, to the presiding Administrative Law Judge, within 20 days after this Order is released.

16. It is further ordered, that Virginia L. and Frederic O. Fruits shall submit, as an amendment to their application, the exhibit omitted from Section V–C, Item 15, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that the petition to deny filed by Mad River Broadcasting Company, Inc. is denied.

18. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

19. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3254 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

Florida Education Television, Inc., et al.; Hearing Designation Order

In re applications of; MM Docket No. 86–42.

	File No.
Florida Educational Television, Inc.	BPET–850812KE
Marathon Educators Broadcasting, Inc.	BPET–851018KL

For construction permit: Marathon, Florida.

Adopted: January 30, 1986.

Released: February 7, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Florida Educational Television, Inc. (Florida Educational), and Marathon Educators Broadcasting, Inc. (Marathon Educators) for authority to construct a new non-commercial educational television station on Channel 9, Marathon, Florida, and an amendment filed by one of the applicants.[1]

2. No determination has been reached that the tower height and location proposed by Marathon Educators would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Florida Educational's proposed tower is to be located 3.21 kilometers from the directional array of AM station WFFG, Marathon, Florida. Because of the proximity of the applicant's proposed tower to WFFG, any grant of a construction permit to the applicant will be conditioned to ensure that WFFG's radiation pattern is not adversely affected by the construction of the proposed station.

4. Florida Educational's proposed site is 0.77 kilometers from the site of the United States Information Agency's AM radio station ("Radio Marti"). Because the proximity of the applicant's proposed tower to Radio Marti could adversely affect Radio Marti's radiation pattern,[2] any grant of the Florida Educational application will be subject to a condition intended to assure that Radio Marti's radiation pattern is not distorted.

5. Except as indicated by issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issue specified below.

6. Accordingly, It Is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the application ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Marathon Educators Broadcasting, Inc. would constitute a hazard to air navigation.

2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

[1] Marathon Educators filed an amendment on December 9, 1985 (the "B" cut-off date) with a facsimile signature. An original page was submitted December 11, 1985. The amendment was timely filed, only the original signature was missing. Since the amendment updates the applicant's legal qualifications and programming, which is required by § 1.65 of the Commission's Rules, it will be accepted for 1.65 purposes only.

[2] The applicant should be fully aware of the fact that Radio Marti is a powerful station and the presence of a strong AM field should be considered in designing the technical aspects of the television station.

3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

4. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It Is Further Ordered, That the amendment filed by Marathon Educators Broadcasting, Inc. dated December 11, 1985 Is Accepted for section 1.65 purposes only.

8. It Is Further Ordered, That the Federal Aviation Administration Is Made A Party Repondent to this proceeding with respect to issue 1.

9. It Is Further Ordered, That in the event of a grant of the application of Florida Educational Television, Inc., the contruction permit shall be conditioned as follows:

A. Prior to construction of the tower authorized herein, permittee shall notify the licensee of AM Station WFFG Marathon, Florida, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

B. Due to the proximity of the proposed television tower to the Radio Marti facility, prior to the commencement of construction of the television station authorized herein, the permittee shall consult with appropriate officials of the United States Information Agency, Bureau of Broadcasting (Voice of America) and shall continue such consultations periodically during the course of construction. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects on the radiation pattern of the radio station.

10. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3255 Filed 2-13-86; 8:45 am]

BILLING CODE 6712-01-M

National Industry Advisory Committee Long Range Planning Committee; Meeting

February 10, 1986.

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Long Range Planning Committee of the National Industry Advisory Committee (NIAC) to be held on February 26, 1986. The Committee will meet at 2:00 PM at the Washington Marriott Hotel, 22nd & M Sts., NW, Washington, DC.

Agenda

1. Welcome and remarks.
2. Overview of NIAC activities since 1981.
3. Questions and discussion.
4. Old/New Business: Adjournment.

Any member of the public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may contact the NIAC Executive Secretary, Claudette E. Pride, on (202) 632-3906).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3249 Filed 2-13-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1567]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

February 7, 1986.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition to amend Part 97 to enhance the Radio Amateur Civil Emergency Service (RACES)

Filed by: Mark Foster for The City of Beverly, Massachusetts, Department of Civil Defense on 1-27-86

Subject: Amendment of Part 69 of the Commission's Rules to Ensure Application of Access Charges to all Interstate Toll Traffic. (RM-5056)

Filed by: William C. Sullivan, Linda S. Legg, Paul G. Lane & Edward L. Eckhart, Attorneys for Southwestern Bell Telephone Company on 1-20-86

Subject: Amendment of the Commission's Rules to Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings. (CC Docket No. 83-1096)

Filed by:

Jonathan D. Blake & Jonathan L. Wiener, Attorneys for The Cellular Telecommunications Division of Telocator Network of America, Inc., on 12-12-85.

Richard L. Vega for Richard L. Vega & Associates, Inc., on 12-27-85.

Joseph F. Hennessey, Attorney for A. Bates Butler III and James A. Mather on 1-17-86.

Robert W. Maher & Elizabeth F. Maxfield for Cellular Telecommunications Industry Association on 1-21-86.

Russell D. Lukas, Thomas Gutierrez & Frederick M. Joyce, Attorneys for Mobile Communications Corporation of America on 1-21-86

Subject:

Deletion of AM Application Acceptance Criteria in § 73.37(e) of the Commission's rules. (MM Docket No. 85-39, RM-3683)

Amendment of Part 73 of the Commissions rules, Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services. (Docket

No. 18651)

Filed by: David Honig, Attorney for The National Black Media Coalition and the New York Affiliate, National Black Media Coalition on 1–16–86.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–3252 Filed 2–13–86; 8:45 am]

BILLING CODE 6712-01-M

Randy Chandler Ministries, Inc., et al., Hearing Designation Order

In re applications of MM Docket No. 86–44; *File No.*

Randy Chandler Ministries, Inc.	BPCT–850920KM
Garcia Communications	BPCT–851209KE

For construction permit: Wolfforth, Texas.
Adopted: January 31, 1986.
Released: February 7, 1986.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 22, Wolfforth, Texas, and a petition to deny Garcia Communications' application.[1]

2. No determination has been reached that the tower height and location proposed by Rand Chandler Ministers, Inc. would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Randy Chandler Ministeries, Inc. has not submitted such a certification. Accordingly, the applicant will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. The transmitter site proposed by Randy Chandler Ministeries, Inc. will be located 1.10 km from AM Station KRLB, Lubbock, Texas, 2.69 km from AM Station KLFB, Lubbock, Texas and .78 km from AM Station KTLK, Lubbock, Texas. Because of the proximity of the proposed tower to KRLB, KLFB and KTLK, if Randy Chandler Ministries, Inc. is the successful applicant in this proceeding, the construction permit will be conditioned to ensure that the radiation patterns of KRLB, KLFB and KTLK will not be adversely affected.

5. The transmitter site proposed by Garcia Communications will be located 2.69 km from AM Station KLFB, Lubbock, Texas. If Garcia Communications is the successful applicant in this proceeding, the construction permit will be appropriately conditioned to ensure that KLFG's radiation patterns will not be adversely affected.

6. Section I, Item 3(a), FCC Form 301, inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. Randy Chandler Ministries, Inc. answered the question negatively. Accordingly, the applicant will be required to submit an explanation of its response to Item 3(a), to the presiding Administrative Law Judge, within 20 days after this Order is released.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenicence, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, It Is Ordered, That pursuant to section 390(e) of the communications Act of 1934, as amended, the applications Are Designated For Hearing In A Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Randy Chandler Ministries, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It Is Further Ordered, That the Federal Aviation Administration Is Made a Party Respondent to this proceeding with respect to issue 1.

10. It Is Further Ordered, That the petition to deny filed by Randy Chandler Ministries, Inc. IS DISMISSED.

11. It Is Further Ordered, That Randy Chandler Ministries, Inc. shall file a site availability certification, in the form required by the Commission, with the presiding Administrative Law Judge, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

12. It is further Ordered, That, in the event that Randy Chandler Ministries, Inc. is the successful applicant for Channel 22, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KTLK, Lubbock, Texas, so that the station may commence determining operating power by the indirect method. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, antenna impedance measurements of the AM station shall be made and sufficient field strength measurements, taken at 10 locations along each of eight equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior to or simultaneous with the filing of an application for a license to cover this permit, the results of the field strength measurements and the impedance measurements shall be submitted to the Commission in an application for the AM station to return to the direct method of power determination.

Prior to construction of the tower authorized herein, permittee shall notify AM Stations KRLB and KLFB, Lubbock, Texas, so that, if necessary, the AM stations may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits.

[1] On January 22, 1986, Randy Chandler Ministries, Inc. filed its petition to deny Garcia Communications' application, alleging that the application was not substantially complete when it was filed and, therefore, it should be denied. Although, petitioner characterizes its objection in terms of "substantial completeness", the petition in effect, challenges the quality or sufficiency of the data submitted. It is, essentially, a petition to specify issues. Since such petitions are no longer permitted, the petition will be dismissed. *Revised Procedures for Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979).

Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation patterns of the AM stations. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM arrays have not been adversely affected and, prior to or simultaneous with the filing of the application for a license to cover this permit, the results submitted to the Commission.

13. It Is Further Ordered, That Randy Chandler Ministries, Inc. shall submit an explanation of its response to section I, item 3(a), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

14. It Is Further Ordered, That, in the event that Garcia Communications is the successful applicant for Channel 22, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KLFB, Lubbock, Texas, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC, to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for a license to cover this permit, the results submitted to the Commission.

15. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

16. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and sahll advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3256 Filed 2-13-86; 8:45 am]

BILLING CODE 6712-01-M

Seattle Public Schools, et al.; Hearing Designation Order

In re applications of MM Docket No. 86-49.

	File No.
Seattle Public Schools for renewal of license for station KNHC(FM), Seattle, Washington.	BRED-830922AQ
and	
Jack Straw Memorial Foundation, Seattle, Washington, Req: 89.5 MHz, Channel 208C; 100 kW(H), 96 kW(V); 348 meters (H&V).	BPED-840103AM

For Construction Permit for a new FM Station.

Adopted: February 3, 1986.
Released: February 7, 1986.

By the Commission:

1. The Commission has before it: (a) an application for renewal of license for station KNHC(FM), Seattle, Washington, filed on September 22, 1983, by the Seattle Public Schools ("School System"); (b) an application to operate on the frequency currently occupied by KNHC, filed on January 3, 1984, by Jack Straw Memorial Foundation ("Jack Straw"); (c) the School System's December 8, 1984, "Petition to Deny or Dismiss" Jack Straw's application; and (d) related responsive pleadings.

2. Jack Straw proposes to share the specified frequency with the School System on a mutually acceptable basis. However, because or an uncertainty as to the applicability of 47 CFR 73.561(b), which provides for applications for share-time operations, Jack Straw prepared its application "to ensure its favorable consideration regardless of how the Commission's Rules are interpreted." Specifically, while that application proposes "unlimited time operation," it states that it was "filed pursuant to and consistent with the intent and meaning of [47 CFR 73.561(b)]."[1] Further, the application "emphasize[s] that [Jack Straw] is not seeking to displace the [School System] as the licensed operator on the channel currently occupied exclusively by station KNHC," but instead "hopes through this application to ultimately share this channel with the [School System] on a mutually acceptable basis." Jack Straw Application at Ex. 1, pp. 1-2. As indicated in paragraph 7, *infra*, Jack Straw's application shall be treated as an application to share time.

3. In its petition, the School System argues, on the basis of the above extracts from Jack Straw's application, that the application contains "two separate and distinct, yet conflicting proposals": one to share time on the channel presently used exclusively by KNHC and the other to operate full time on that channel. The School System contends that making alternative proposals in a single application violates the spirit of the Commission's Rules on contingent and applications, 47 CFR 73.3517, 73.3618. Accordingly, the School System maintains that Jack Straw's application must be either dismissed or denied. With respect to the proposal to share time, the School System also asserts that "there is nothing in § 73.561(b)] to indicate that another applicant may file for time sharing where the licensee is operating at least 12 hours per day." Petition at 2. The School System states that KNHC has operated more than 12 hours per day since April 7, 1983, and plans to continue such operation in the future. The School System argues that those hours of operation exceed the level set by § 73.561(b) and, therefore, that it cannot be forced to share time with Jack Straw.

4. The School System's argument that the alternative proposal for full-time and part-time operation contained in Jack Straw's application make that application inconsistent with the spirit behind §§ 73.3517 and 73.3518 of the Rules misconstrues those rules. Section 73.3517 proscribes only the filing of applications which are contingent upon action on another Application pending before the Commission. *See Contingent applications in the Broadcast Services*, 22 RR 299 (1961), in conjunction with former FCC Form 301, p. 1, item 3 (Mar. 1960). *See also Contingent Applications*, 61 FCC 2d 238 (1976). Jack Straw's application is not now, and never has been, contingent upon Commission action on any other application. Section

[1] The response to the pertinent item of FCC Form 340 which proposes unlimited time operation refers to a statement in an Exhibit appended to the application. The Exhibit qualifies the unlimited-time proposal and clearly enunciates the intent of the applicant to seek a share-time authorization.

73.3518 provides that "[w]here an application is pending and undecided before the Commission, no subsequent inconsistent or conflicting application may be filed by or on behalf of the same applicant, successor or assignee." There is not now, and there has never been, any application pending before the Commission filed by or on behalf of Jack Straw which was or is inconsistent or in conflict with Jack Straw's instant application. The Commission's longstanding policy with regard to competing applications for full-time operation on the same noncommercial educational channel is to direct the presiding Administrative Law Judge to consider whether a share-time arrangement would serve the public interest better then would operation restricted to a single licensee. *See Granfalloon Denver Educational Broadcasting, Inc.*, 43 FR 49560 (Broadcast Bur. 1978). *See also Cleveland Board of Education*, 87 FCC 2d 9, 16 (1981). In view of that policy, the inclusion of alternative proposals for full-time and part-time operation in Jack Straw's application provides no ground for dismissing or denying that application. The proffering of those alternatives did not make Jack Straw's application "contingent," "inconsistent," or "conflicting" within the meaning of the Commission's Rules, but instead was a reasonable response to Jack Straw's uncertainty as to what effect, if any, KNHC's hours of operation at the time Jack Straw filed its application would have on an application which proposed only part-time operation. Jack Straw's application repeatedly indicates that Jack Straw intended its application to be treated as an application to share time unless the Commission were to find that § 73.561(b) did not apply to the School System. Accordingly, we will examine whether that rule is applicable in this case.

5. Section 73.561(b) states, in pertinent part, that any noncommercial educational FM station "which do[es] not operate 12 hours per day each day of the year, will be reguired to share use of the frequency [on which the station operates] upon the grant of an appropriate application proposing such share time arrangement." A licensee opposing an application for time sharing on the ground that the station's hours of operation exceed the level established by this rule must provide the Commission with a "compilation of the hours broadcast" showing that its station had broadcast "at least 12 hours per day each day of this year." *Noncommercial Educational Stations*, 44 RR 2d 235, 252 (1978). Implicit in the requirement for a "compilation of the hours broadcast" is a requirement that a licensee's showing be based upon its *established record* of having broadcast "at least 12 hours per day each day of the year." Jack Straw filed its construction permit application on January 3, 1984. According to the information provided by the School System, as of Jack Straw's filing date, KNHC had been operating continuously for at least 12 hours per day only since April 7, 1983, a period of less than nine months.[2] It appears from the record that Jack Straw approached the School System in the Spring of 1981 concerning the possibility of sharing time on the channel occupied by KNHC. Two years later, in Spring, 1983, Jack Straw presented the School System with a written presentation containing a share-time proposal after renewed discussions initiated by Jack Straw on that subject. At about the time of the renewed verbal overtures, KNHC increased the duration of its daily operations to at least 12 hours per day. We do not construe the language of the rule to literally require 12 hours of broadcasting every single day for an entire year to prevent the invocation of the rule. Nor does the rule's invocation mandate time sharing where, as in this case, the parties have been unable to agree on operating hours.[3] But the circumstances presented here, including broadcasting at less than the required hours for a quarter of the year prior to the Jack Straw filing plus the circumstances surrounding the return to a longer broadcast schedule (immediately following Jack Straw's renewed approaches to the School System on the matter of sharing time), persuade us that Jack Straw is entitled under the terms of the rule to have its application considered through the hearing process.

6. The conclusion that the School System is not exempt from the possibility of forced time sharing under § 73.561(b) leaves open the question whether we should treat Jack Straw's application as an application to share time rather than as an application for full-time operation on the specified frequency. In answering this question, we find it significant that the subject applications will have to be designated for a comparative hearing on a share-time issue regardless of how Jack Straw's application is treated. *Compare Granfalloon Denver Educational Broadcasting, Inc., supra* (share-time issue designated where application for full-time operation conflicted with renewal application) *with Southern Keswick, Inc.*, 34 FCC 2d 624, 626 (1972) (share-time issue would be designated where share-time applications conflict). Therefore, the question of how we should treat Jack Straw's application is, in effect, a question whether the School System should have to face the prospect of losing its license for KNHC entirely.

7. We believe that the School System should not have to face that prospect. The School System is fully qualified to remain a Commission licensee. Its license renewal application for KNHC would have been granted routinely but for Jack Straw's competing application for the specified frequency. Moreover, Jack Straw's stated goal in filing its application was to obtain a share-time arrangement with the School System, and that application makes clear Jack Straw's intent to have its application treated as an application to share time in the event the School System can be forced to share time under § 73.561(b). Inasmuch as paragraph 5, *supra*, holds that the School System must face the prospect of sharing time under that rule, we will treat Jack Straw's application as an application to share time and designate the subject applications for a comparative hearing on a share-time issue. *Cf. Southern Keswick, Inc., supra* at 626. In taking that action, we note that while operating at least 12 hours per day for less than one year prior to the filing of an application to share time and a statement of future intention to operate at least 12 hours per day every day do not exempt a licensee from the *possibility* of involuntary time sharing, the presiding Administrative Law Judge may consider the licensee's entire record during the license term for which renewal is sought as well as the licensee's statement of future intention, in determining whether the public interest would be served by a share-time arrangement between the renewal applicant and the share-time applicant rather than by the renewal applicant's continued, increased operating

[2] Immediately prior those nine months, the pleadings indicate that the School System broadcast an average of approximately 67 hours per week.

[3] Section 73.561(b) states that each station "which does not operate 12 hours per day each day of the year, will be required to share use of the frequency" on which it operates. But the rule also states that the station will be required to do so "upon the grant of an appropriate application proposing [a] share time arrangement." We do not interpret this section as providing an absolute right to share time for any applicant proposing such use. Rather, a decision as to whether a share use application is "appropriate" within the meaning of that rule requires a public interest determination by the presiding Administrative Law Judge, just as any application for a broadcast facility does. In particular, as in this case, the Judge will be required to make a determination of whether full-time use by the School System on an expanded schedule or shared use between the School System and Jack Straw is preferred. *See* ¶¶ 7, 14 *infra*.

schedule.[4] *See, e.g., Committee for Community Access* v. *F.C.C.*, 737 F.2d 74, 77 (D.C. Cir. 1984). Accordingly, our action here should not be construed as implying that the School System's broadcast record has been less than meritorious, or that a share-time arrangement between the School System and Jack Straw would serve the public interest better than would operation restricted to the School System. *See, e.g., Radio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom. Victor Broadcasting, Inc.* v. *FCC*, 722 F.2d 756 (D.C. Cir. 1983).

8. Section II, item 2a, of Form 340 asks each applicant for a new noncommercial educational station to state whether it is a nonprofit educational *institution*. Jack Straw's "yes" answer to this question appears to be inconsistent with that applicant's articles of incorporation. Section II of Jack Straw's articles states that Jack Straw is a corporation organized "exclusively" for "the establishment and operation for educational and cultural purposes of one or more radio broadcasting stations. . . ." Such corporations are classified as nonprofit educational organizations rather than nonprofit educational institutions. *Lower Cape Communications, Inc.*, 47 RR 2d 1577, 1578 (1980). Accordingly, Jack Straw shall be required to submit an amendment either setting forth Jack Straw's basis for claiming to be a nonprofit educational institution or specifying that Jack Straw is a nonprofit educational organization. In the event the amendment specifies that Jack Straw is a nonprofit educational organization, Jack Straw will be required to submit an additional amendment responding to section II, item 2b, of Form 340, which directs each nonprofit educational organization applying for a construction permit for a new noncommercial educational station to submit an exhibit stating how the proposed station would be used for the advancement of an educational program. In the event Jack Straw's submissions are deficient, the presiding Administrative Law Judge shall specify an appropriate issue directed to Jack Straw's basic qualifications (or lack thereof) to be a noncommercial educational FM licensee.

9. The financial information submitted by Jack Straw does not demonstrate its financial qualifications. That information fails to indicate the total cost of constructing the proposed station,[5] and whether sufficient funds will be available to cover these costs as well as operational costs for the first three months.[6] Accordingly, an appropriate issue will be specified. *See South Florida Broadcasting Co.*, 94 FCC 2d 452 (1983).

10. Jack Straw has not indicated whether it has provided local notice of the filing of its application, as required by 47 CFR 73.3580(f). To avoid delay, we will waive 47 CFR 73.3564(c) on our own motion, and require Jack Straw to provide local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge within thirty days of the release of the Order.

11. Jack Straw has proposed a transmitter site at Cougar Mountain, Washington. This location is the site of numerous transmitters, and was recently the subject of a joint survey by the United States Environmental Protection Agency and the Commission's Office of Science and Technology which determined that in some areas human exposure to radiofrequency (RF) radiation emitted by the transmitters currently in operation exceeded the guideline adopted by the Commission in its *Report and Order in Gen. Docket No. 79–144*, FCC 85–90, 100 FCC 2d 543 (1985), *recon. denied in pertinent part, Memorandum Opinion and Order in Gen. Docket 79–144*, 50 FR 38653 (1985).[7] A proposed operation which would exceed those guidelines or which would increase the extent to which those guidelines are being exceeded would constitute a major environmental action. 47 CFR 1.1305(d); *Report and Order in Gen. Docket No. 79–144, supra* at 561. Accordingly, Jack Straw will be directed to determine whether the operation of its proposed facility, together with the continuation of the operations presently at Cougar Mountain, would result in RF radiation levels exceeding those guidelines, and to submit its findings to the presiding Administrative Law Judge within thirty days of the release of this Order. If Jack Straw determines that the guidelines would be exceeded, Jack Straw shall, in addition, submit to the presiding Administrative Law Judge an environmental narrative complying in all respects with 47 CFR 1.1311. Jack Straw shall file a copy of each submission with the Chief, Audio Services Division, who will then proceed in this matter in accordance with the provisions of 47 CFR 1.1313(b). We will waive 47 CFR 1.1317 to the extent that the comparative phase of the case may begin before the completion of the environmental phase. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied*, 83 FCC 2d 337 (1980).

12. Except as may be indicated by the issues specified below, the School System and Jack Straw are qualified to operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding upon the issues specified below.

13. Accordingly, It Is Ordered, That the "Petition to Deny or Dismiss," filed December 8, 1984, by the Satellite Public Schools, Is Denied.

14. It Is Further Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the applications of the Seattle Public Schools and Jack Straw Memorial Foundation Are Designated For Hearing In A Consolidated Proceeding, at a time and a place to be specified in a subsequent Order, upon the following issues:

1. To determine whether, in light of the evidence adduced concerning the deficiency set forth in paragraph 9, *supra*, Jack Straw is financially qualified.

2. If a final environmental impact statement is issued with respect to Jack Straw which concludes that the

[4] We note, for example, that the School System operated KNHC at least 12 hours per day from January 1, 1980, through August 31, 1982, and from April 7, 1983, through the completion of the pleading cycle in this case.

[5] Section III of Jack Straw's application makes reference to its Exhibit 4 in an apparent attempt to provide the costs of obtaining monitoring and studio equipment, land, and buildings for the proposed station. Exhibit 4, however, is merely an equipment inventory for station KRAB(FM), Seattle, Washington, a station which Jack Straw has sold to SCS, Inc. *See* Application for Assignment of License, BALED–830620GR, granted February 7, 1984. Furthermore, Exhibit 6 to Jack Straw's construction permit application indicates that at least some of the equipment listed in Exhibit 4 was sold to SCS, Inc.

[6] Jack Straw indicates that the proceeds from the KRAB sale may not be available for the construction and first three-month operation of the proposed station, and therefore, proposes to rely on a $250,000 loan from the Reginald A. Fessenden Fund ("Fund"). That loan, however, is contingent on Jack Straw's agreeing to make the Fund a party to the trust deed on certain real property; and there is no indication that Jack Straw has agreed to meet that contingency. While the KRAB sale was consummated after Jack Straw filed its construction permit application, Jack Straw has not updated its application to indicate whether the proceeds of the sale will be available for the construction and first three-month operation of the proposed station. Since Jack Straw's application proposed reliance on the loan rather than on the sale proceeds, Jack Straw was entitled to assume that there would be no decisionally significant question regarding the availability of those proceeds. Therefore, no 47 CFR 1.65 issue will be specified.

[7] Those guidelines are set forth in *OST Bulletin No. 65, Evaluating Compliance with FCC Specified Guidelines for Human Exposure to Radiofrequency Radiation*, 33–35 (Oct. 1985).

proposed facilities are likely to have an adverse effect on the quality of the environment:

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 CFR 1.1301–19; and

(b) whether, in light of the evidence adduced pursuant to (a) above, Jack Straw is qualified to construct and operate as proposed.

3. To determine whether a share-time arrangement between the School System and Jack Straw would result in more effective use of the specified channel than would operation restricted to the School System and thus better serve the public interest, and, if so, the terms and conditions of the arrangement.[8]

15. It Is Further Ordered, That, in the event the applicants are otherwise qualified, the presiding Administrative Law Judge shall take the following action:

1. If it is determined pursuant to issue 3, *supra*, that a share-time arrangement between the School System and Jack Straw would result in more effective use of the specified channel than would operation restricted to the School System, grant the applications of the School System and Jack Straw to the extent consistent with the terms and conditions of the arrangement determined pursuant to that issue; or

2. If it is determined pursuant to issue 3, *supra*, that operation restricted to the School System would result in more effective use of the specified channel than would a share-time arrangement between the School System and Jack Straw, grant the application of the School System and deny the application of Jack Straw.

16. It is Further Ordered, That, within thirty days of the release of this order, Jack Straw shall either

1. inform the presiding Administrative Law Judge of its basis for claiming to be a nonprofit educational institution, or

2. specify that it is a nonprofit educational organization and show how its proposed station would be used for the advancement of an educational purpose.

17. It is Further Ordered, That, 47 CFR 73.3564(c) Is Waived to the extent indicated herein. Within thirty days of the release of this Order, Jack Straw shall inform the presiding Administrative Law Judge as to whether local notice of the filing of its application has been published.

[8] Our action in specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or during the hearing, from negotiating a settlement on their own.

18. It is Further Ordered, That, 47 CFR 1.1317 Is Waived to the extent indicated herein. Within thirty days of the release of this Order Jack Straw shall submit to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division:

(1) Its findings as to whether the operation of its proposed facility, together with the continuation of the operations presently at Cougar Mountain, would result in RF radiation levels exceeding Commission guidelines, cited in paragraph 11, above; and

(2) In the event Jack Straw finds that the guidelines would be exceeded, an environmental narrative complying in all respects with 47 CFR 1.1311.

19. It is Further Ordered, That, in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC 20554.

20. It is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 CFR 1.221(c), in person or by attorney, within twenty days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

21. It is Further Ordered, That, the applicants herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 311(a)(2), and 47 CFR 73.3594, shall give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of such notice as required by 47 CFR 73.3594(g).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–3257 Filed 2–13–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities Under OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Wm. Jarrel Smith, Jr., Director of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone (202) 523–5866. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

Forms FMC–17A, FMC–17B, and FMC–17C—Carrier, Port and Shipper.

Surveys Regarding Section 18(a) Data.

FMC requests extension of clearance for these voluntary surveys which request information from the shipping industry concerning the impact of the Shipping Act of 1984 upon the international ocean shipping industry on an annual basis. The Commission estimates that the survey will be sent to approximately 250 carriers, 60 ports, and 180 shippers. Representatives from each of these entities will be chosen after consultation with various associations that represent these groups. If anyone in the carrier, port or shipper community, wishes to participate in these surveys, they should contact the Secretary of the Federal Maritime Commission at the address listed above. Total estimated annual cost to the Federal Government is approximately $10,700.00; total estimated annual cost to respondents is approximately $120,000.00.

John Robert Ewers,

Secretary.

[FR Doc. 86–3321 Filed 2–13–86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 224–003985–004.

Title: Port of Seattle and Seacon Terminals, Inc.

Parties:

Port of Seattle (Port)

Seacon Terminals, Inc. (Lessee)

Synopsis: The proposed amendment amends the lease agreement between the Port and the Lessee, by deleting 58,128 square feet from the leased premises. The parties have requested a shortened review period for the agreement.

Agreement No.: 213–010886.

Title: Costa-Italia/Trasatlantica Space Charter and Sailing Agreement.

Parties:

Costa Container Lines, S.p.A.

"Italia" di Navigazione, S.p.A.

Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed agreement would permit the parties to charter space on each others vessels, coordinate sailings and agree on certain ocean carrier services in the trade between ports on the Atlantic Coast of the United States (from Eastport, Maine, to but not including Jacksonville, Florida), on the one hand, and ports on the Mediterranean Sea, the Iberian Peninsula, the Black Sea, the Arabian/Persian Gulf and adjacent waters, the Red Sea and the Gulf of Aden, ports in India and Pakistan, and all ports on the African Continent (including Canary Islands), on the other hand; and between interior or coastal points served via such ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 11, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–3268 Filed 2–13–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fleetwood Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 10, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fleetwood Bank Corporation,* Fleetwood, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Fleetwood, Fleetwood, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Williamsburg Bancshares, Inc.,* Williamsburg, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers National Bank, Williamsburg, Kentucky.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harper Bancshares, Inc.,* Harper, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Harper, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Sierra Tahoe Bancorp,* Truckee, California; to become a bank holding company by acquiring 100 percent of the voting shares of Truckee River Bank, Truckee, California.

Board of Governors of the Federal Reserve System, February 10, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 80–3265 Filed 2–13–86; 8:45 am]

BILLING CODE 6210–01–M

UNB Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *UNB Corp.,* Canton, Ohio; to engage through its subsidiary, United Credit Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and accident and health insurance in connection with loans made by affiliates, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Applicant will engage in this activity in the State of Ohio.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinios 60690:

1. *Naperville Financial Corporation,* Naperville, Illinois; to engage through its subsidiary, Naper Securities Corporation, Naperville, Illinois, in discount brokerage activities.

2. *Banks of Iowa, Inc.,* Des Moines, Iowa; to engage through its subsidiary, Banks of Iowa Credit Corporation, Des Moines, Iowa, in acquiring loans from banking subsidiaries of Applicant; purchasing participations in loans made by the banking subsidiaries for the sole purposes of providing liquidity to the subsidiaries and facilitating the needs of the subsidiaries customers; servicing loans for the subsidiaries; and making additional extensions of credit, related to loans acquired from subsidiaries and participations purchased from subsidiaries.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnestoa 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to engage through its subsidiary Norwest Investment Management, Inc., Minneapolis, Minnesota, in the following activities: (i) Serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser (as defined in section 2(a)(2) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and management a closed-end investment company; (iii) providing portfolio investment advice to any other person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and, (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

2. *Bank Shares Incorporated,* Minneapolis, Minnesota; to engage through its subsidiary, Marquette Investor Services Incorporated, Minneapolis, Minnesota, in discount brokerage activities.

Board of Governor of the Federal Reserve System, February 10, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–3266 Filed 2–13–86; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE SECRETARY

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 31, 1986.

Social Security Administration

Subject: Streamlined State Plan for AFDC as Amended by Final Regulations on Disregard of Support and Maintenance Assistance Based on Need—Revision—(0960–0252)
Respondents: State or Local Governments
Subject: Student's Statement Regarding Resumption of School Attendance—Revision—(0960–0143)
Respondents: Individuals or Households
OMB Desk Officer: Judy A. McIntosh

Public Health Services

Centers for Disease Control

Subject: Day-Care Center Study: A Baseline for Disease Prevention—New Collection
Respondents: Individuals or Households

Food and Drug Administration

Subject: Medical Device and Laboratory Product Problem Reporting Program—Reinstatement—(0910–0143)
Respondents: Individuals or Households
Subject: Good Manufacturing Practices for Blood and Blood Components 21 CFR Part 606—Revision—(0910–0116)
Respondents: Blood Establishments
OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Report Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: February 10, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–3220 Filed 2–13–86; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 85N–0514]

Grants and Cooperative Agreements; Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Funds; Request for Applications; Amended Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice that published January 10, 1986 (51 FR 1299), by removing the request for the submission of a letter of intent to file a grant application for funds to support clinical trials on safety and effectiveness of orphan products. This action is necessary because the agency does not have Office of Management and Budget approval under the Paperwork Reduction Act of 1980 for the Letter of Intent.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rm. 12A–40, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 10, 1986 (51 FR 1299), FDA announced the anticipated availability of funds for Fiscal Year 1986 for awarding grants to support clinical trials on safety and effectiveness of orphan products. That notice is amended by removing from the "Dates" paragraph in the first column on page 1299 the statement "Letter of intent should be submitted by February 10, 1986," and in the center column on page 1301 by removing the paragraph "A. *Letter of Intent.*"

Dated: February 6, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3301 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M-0526]

Medical Devices; CooperVision, Inc.; Premarket Approval of PERMATHIN™ (Tetrafilcon A) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by CooperVision, Inc., San Jose, CA, for premarket approval, under the Medical Device Amendments of 1976, of the PERMATHIN™ (tetrafilcon A) Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 17, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for adminstrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On December 21, 1984, CooperVision, Inc., San Jose, CA, 95134, submitted to CDRH a supplemental application for premarket approval of the spherical PERMATHIN™ (tetrafilcon A) Hydrophilic Contact Lens. The lens ranges in powers from plano to −10.00 diopters (D). The lens is indicated for extended wear of from 1 to 30 days between removals for cleaning and disinfection or as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic. The lens may be worn by persons who may exhibit astigmatism of 2.50 D or less that does not interfere with visual acuity. The lens is to be disinfected using either heat or chemical lens care system. On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 30, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the PERMATHIN™ (tetrafilcon A) Hydrophilic Contact Lens states that the lenses are to be used only with certain solutions for disinfection and other purposes. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.). and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decison in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-3302 Filed 2-13-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0032]

Medical Devices; IOLAB Corp.; Premarket Approval of Model 91-50 Anterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOLAB Corp., Covina, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model 91-50 Anterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 17, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757

Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION: On July 12, 1982, IOLAB Corp., Covina, CA 91722, submitted to CDRH an application for premarket approval of the Model 91–50 Anterior Chamber Intraocular Lens (IOL's). The device can be used for primary or secondary implantation in patients 60 years of age or over where a cataractous lens has been removed by intracapsular or extracapsular extraction methods. On January 27, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 27, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), IOL's are regulated as class III devices (premarket approval).

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–3303 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1986 and Rate of Insurance Premium

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1986, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11 percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.38 percent), and rounding the result (10.88 percent) upward to the nearest ⅛ percent (11 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1986 is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 12 percent for the quarter ending June 30, 1985; 11⅜ percent for the quarter ending September 30, 1985; and 10⅞ percent for the quarter ending December 31, 1985.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 11 percent. Using the regulatory formual (42 CFR 60.13(a)(3)) in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.38 percent); adding 3.50 percent (10.88 percent); and rounding that figure to the next higher one-eighth of 1 percent (11 percent).

3. For fixed rate loans executed during the period of January 1, 1986 through March 31, 1986, and for variable rate loans executed on or after October 22, 1985, the interest rate is 10½ percent. The Health Professions Educational Assistance Amendments of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a) (2) and (3)) and substituting the new statutory change of 3 percent, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.38 percent); adding 3.0 percent (10.38 percent) and rounding that figure to the next higher one-eighth of 1 percent (10½ percent).

B. The Health Professions Educational Assistance Amendments of 1985 contain modifications to the insurance premium calculation that become effective 9 months after enactment of the statute (July 21, 1986). Until that date, § 60.14(b) of the regulations remains in effect. It

provides that the rate of the insurance premium shall not exceed 2 percent per year of the loan principal and that the Secretary will announce the rate of the insurance premium on a quarterly basis through a notice published in the Federal Register.

The Secretary announces that for the period ending March 31, 1986, the rate of the insurance premium continues to be 2 percent per year of the loan principal for loans executed through the HEAL program.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: February 10, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-3304 Filed 2-13-86; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Cancer Institute; Meeting

Correction

In FR Doc. 86-1529, beginning on page 3259, in the issue of Friday, January 24, 1986, make the following correction:

In the fourth line, the date "February 25, 1986, should read February 2-5, 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Intention To Extend a Concession Permit; Exum Mountain Guide Service

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to extend the concession permit with Exum Mountain Guide Service, authorizing them to continue to provide mountain climbing school and guide service to the public at Grand Teton National Park, Wyoming for a period of two (2) years from January 1, 1986, through December 31, 1987.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessions have performed their obligations to the satisfaction of the Secretary under existing concession permit which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposals, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado, 80225, for information as to the requirements of the proposed permit.

Dated: January 23, 1986.

Lorraine Mintzmeyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 86-3248 Filed 2-13-86; 8:45 am]

BILLING CODE 4310-70-M

Intention To Extend Concession Permits; Heart Six Ranch, et al.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to extend the concession permits with Heart Six Ranch, National Park Float Trips, Osprey Float Trips, Parkland Expeditions, Barker-Ewing Scenic Tours, Inc., Fort Jackson Float Trips, Solitude Float Trips and Rivermeadows Inc. authorizing them to continue to provide river running, facilities and service for the public at Grand Teton National Park, Wyoming for a period of two (2) years from January 1, 1986, through December 31, 1987.

These permit extensions have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing concession permits which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permits and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado, 80225, for information as to the requirements of the proposed permits.

Dated: January 23, 1986.

Lorraine Mintzmeyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 86-3251 Filed 2-13-86; 8:45 am]

BILLING CODE 4310-70-M

Intention To Extend a Concession Permit; Teton Trail Rides, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to extend the concession permit with Teton Trail Rides, Inc., authorizing them to continue to provide saddle and pack horse services for the public at Grand Teton National Park, Wyoming for a period of two (2) years from January 1, 1986, through December 31, 1987.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing concession permit which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado, 80225, for information as to the requirements of the proposed permit.

Dated: January 23, 1986.

Lorraine Mintzmeyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 86-3250 Filed 2-13-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Realty Action; Competitive Sale of Public Land

AGENCY: Bureau of Reclamation.

ACTION: Notice of Realty Action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. section 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the lands described below and will reject any bids for less than the appraised values.

DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Valerie Smithe, Realty Technician, Lower Colorado Regional Office, Bureau of Reclamation, 1404 Colorado Street, Boulder City, Nevada 89005, telephone (702) 293-8428.

Tract LC-86-1-1

SUPPLEMENTARY INFORMATION:

A tract of land situated in the city of La Quinta, Riverside County, California, in the Northwest quarter (NW¼) of Section Seventeen (17), Township Six (6) South, Range Seven (7) East, San Bernardino Base and Meridian, and being all that portion of said Northwest quarter (NW¼) lying easterly of the easterly right-of-way line of the Coachella Canal, and as described in those certain deeds to the United States of America as follows:

Deed dated June 11, 1952, recorded August 12, 1952, in Book 1392, Page 329, and Deed dated March 5, 1952, recorded April 18, 1952, in Book 1360, Page 541; said deeds being recorded in the Official Records, Riverside County, California. Said tract of land being more particularly described by metes and bounds as follows:

Commencing at the northeast corner of said Northwest quarter (NW¼) being the True Point of Beginning; thence South 0°06'18" West 1721.07 feet along the east line of said Nortwest quarter (NW¼) to a point on the easterly right-of-way line of the Coachella Canal; thence North 36°55'16" West 926.66 feet along the said easterly right-of-way line to a point on the south line of the North half South half North half Northwest quarter (N½S½N½NW¼); thence South 89°51'31" East 12.49 feet along the south line of the North half South half North half Northwest quarter (N½S½N½NW¼) to a point on said easterly right-of-way line; thence North 36°55'16" West 406.17 feet along said easterly right-of-way line to a point on the south line of the South half North half Northwest quarter (S½N½N½NW¼); thence South 89°47'43" West 12.47 feet along the south line of the South half North half North half Northwest quarter (S½N½N½NW¼) to a point on said easterly right-of-way line; thence North 36°55'16" West 166.24 feet along said easterly right-of-way line to the beginning of a curve; thence Northeasterly along said easterly right-of-way line on a curve to the right having a radius of 83.22 feet through a central angle of 67°25'53" for an arc distance of 97.94 feet to the end thereof; thence North 30°30'37" East 496.16 feet along said easterly right-of-way line to a point on the north line of said Northwest quarter (NW¼); thence North 89°38'27" East 465.60 feet along the north line of said Northwest quarter (NW¼) to the south one-quarter corner of Section Eight (8), Township Six (6) South, Range Seven (7) East, San Bernardino Base and Meridian; thence South 89°59'17" East 191.40 feet along the north line of said Northwest quarter (NW¼) to said True Point of Beginning.

Said above described tract of land contains 21.97 acres, more or less.

Tract LC-86-1-2

Parcels 1 and 2.

The subject parcels are situated in the city of La Quinta, Riverside County, California, within the West one half of the East one half (W½E½) of Section Thirty-one (31), Township Five (5) South, Range even (7) East, San Bernardino Base and Meridian, and as described in that certain Grant Deed as follows:

Grant Deed dated March 9, 1953, recorded June 5, 1953, in Book 1479, Page 114, said document being recorded in the Official Records, Riverside County, California. Said parcels of land being more particularly described by metes and bounds as follows:

Parcel 1: Commencing at the Northwest corner of said West half East half (W½E½) of said section Thirty-one (31), thence South 0°12'21" East, 470.91 feet along the west line of said West half East half (W½E½) thence North 89°47'39" East, 30.00 feet to the point of beginning and thence from said point of beginning by metes and bounds as follows:

1st course: Parallel to and 30.00 feet east of the west line of said West half East half (W½E½) South 0°12'21" East, 74.00 feet.

2nd course: North 89°47'39" East, 26.50 feet.

3rd course: Parallel to and 56.50 feet east of the west line of said West half East half (W½E½) North 0°12'21" East, 74.00 feet.

4th course: South 89°47'39" East. 26.50 feet to the said point of beginning.

Said above described parcel of land contains 0.05 arce, more or less.

Parcel 2: Commencing at the Northwest corner of said West half East half (W½E½) of said Section Thirty-one (31), thence South 0°12'21" East, 1036.00 feet along the west line of said West half East half (W½E½) thence North 89°47'39" East, 30.00 feet to the point of beginning and thence from said point of beginning by metes and bounds as follows:

1st course: Parallel to and 30.00 feet east of the west line of said West half East half (W½E½) South 0°12'21" East, 150.00 feet.

2nd course: North 89°47'39" East, 270.00 feet.

3rd course: Parallel to and 300.00 feet east of the west line of said West half East half (W½E½) North 0°12'21" West, 150.00 feet.

4th course: South 89°47'39" West. 270.00 feet to the said point of beginning.

Said above parcel of land contains 0.93 acre, more or less.

Said above described Parcel 1 and Parcel 2 aggregate 0.98 acre, more or less.

Said above tracts shall be subject to easements or right-of-way existing or of record in favor of the public as to third parties.

The tracts will be offered for sale through the competitive bidding process. A public auction will be held in Forbes Auditorium, Coachella Valley Water District, Avenue 52 and Highway 111, Coachella, California 92236 on April 23, 1986, at 10 a.m., at which time the sealed bids will be opened and oral bids will be accepted. Sealed bids will be accepted at the Bureau of Reclamation, Lower Colorado Region, 1404 Colorado Street P.O. Box 427, Boulder City, Nevada 89005, until close of business on April 18, 1986. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. section 374), or other applicable laws.

Both tracts are within the incorporated city of La Quinta, Riverside County, California, and have the potential for residential and recreational development. The sale is consistent with Coachella Valley Water District and the Bureau of Reclamation land use planning and it was determined

that the public interest would best be served by offering these lands for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion, an Environmental Analysis, and a Land Report have been completed and approved, and are available for public review at the Bureau of Reclamation, Lower Colorado Region, 1404 Colorado Street, Boulder City, Nevada 89005.

Tract No. LC–86–1–2 (Parcels 1 and 2) lies within a designated fee area, as outlined in the Coachella Valley Fringed-Toed Lizard Habitat Conservation Plan, dated June 1985, pursuant to section 10(a) of the Endangered Species Act of December 28, 1973 (87 Stat. 8840, as amended, and will be subject to a $600 per acre fee to be extracted from the developer, if and when developed, at either grading or building stage of project approval conducted by local Government.

The quitclaim deeds issued for the tracts sold will be subject to any rights-of-way record, and any public road and utility easements identified by the city of La Quinta, and the county of Riverside, if applcable. This land sale will be for the surface estates only, minerals estates will remain in ownership of record.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Region Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: February 5, 1986.

Roy D. Gear,

Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.

Sales Procedures—La Quinta Land Sale

April 23, 1986

Introduction

Action: The Department of the Interior, Bureau of Reclamation, is offering Federal lands in the city of La Quinta, California for Sale at Public Auction.

Date: April 23, 1986, Bidder Registration begins at 9:00 a.m., Auction begins at 10:00 a.m.

Location: Coachella Valley Water District, Forbes Auditorium, Avenue 52 and Highway 111, Coachella, California 92236.

Price: No bid will be accepted for less than the appraised fair market value for each tract.

Copies of the report, maps, descriptions, and actions relating to this sale are available for review at the Division of Water and Land Operations, Bureau of Reclamation, Lower Colorado Region, 1404 Colorado Street, Boulder City, Nevada 89005 between 8 a.m. and 4 p.m., Monday through Friday, telephone (702) 293–8428.

Before submitting bids, it is recommended that prospective buyers inspect the tracts of land.

Sale Procedures

The auction will begin at 10 a.m. and will proceed continously until all tracts have been offered. No preference rights are recognized in this sale.

Should any tracts remain unsold, they may be reoffered for sale at a later date as determined by the Regional Director, Bureau of Reclamation, Boulder City, Nevada.

No conveyance of land will be made to Federal employees or their dependents who might reasonably be expected to have information with regard to the property or its uses which is not readily available to members of the public, or who participate in the decision to dispose of this property, or in this sale itself.

Federal law limits sale of this land to United States citizens (18 years of age or over); corporations subject to the law of any State or of the United States; and any entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the Government. The citizenship limitation does not apply to agents who bid on behalf of an associate, client, or employer.

Registration

On the day of the sale, anyone intending to bid on any of the offered land must register and obtain a bidder's identification card. Registration will be conducted by a Bureau of Reclamation registration official at a *Registration Table* at the public land sale. Registration will begin at 9 a.m. Bidders may register anytime during the sale; however, they must be registered before bidding. The bidder identification card is merely a numbered card which must be displayed when offering a bid, so the auctioneer can conduct an orderly bidding process.

Bidding Information and Instructions

Bids may be made either by sealed bids or by oral bidding at the sale.

Sealed bids sent by mail or personally delivered will only be considered if received prior to the close of business on April 18, 1986, at the following address:

Lower Colorado Regional Office, Bureau of Reclamation, P.O. Box 427, 1404 Colorado Street, Boulder City, Nevada 89005, Attention: Receiving Officer, Code: LC–375, La Quinta Sale.

Sealed bids must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Reclamation for not less than one-fifth (20 percent) of the amount of the bid, and must be in a separate sealed envelope enclosed within the transmittal envelope. The sealed bid envelope must be marked conspicuously on the face of the envelope as follows:

SEALED BID
LA QUINTA LAND SALE
SALE NO. LC–86–1
TRACT NO. ————
SALE TO BE ————, 198—

Oral bids will be received immediately after all sealed bids have been opened and the highest sealed bid is announced. The highest sealed bid for each tract will then become the base price for the oral bids. If the highest bid is an oral bid, the successful bidder will be required to pay immediately one-fifth (20 percent) of the high bid amount by cash, personal check, money order, bank draft, cashier's check, or any combination of these. Failure to deposit the required high bid amount will result in disqualification as the high bidder. The authorized officer shall determine whether to accept the highest bid, withdraw the tract from the market, or reoffer the tract of land for sale at a later date.

Post Sale Information and Requirements

The successful bidder will be mailed "A Notice of High Bidder Declared" along with other documents. Upon receipt of this notice, the successful bidder will have 30 days to make payment of the full purchase amount. Failure to do so will disqualify the bid and forfeiture of all deposits.

General Sales Information

Prospective buyers are encouraged to visit the tracts prior to submitting bids.

Land Description

Tract LC–86–1–1 (21.97 acres)

A tract of land situated in the city of La Quinta, Riverside County, California, in the Northwest quarter (NW¼) of Section Seventeen (17), Township Six (6) South, Range Seven (7) East, San Bernardino Base and Meridian, and being all that portion of said Northwest quarter (NW¼) lying easterly of the easterly right-of-way line of the Coachella Canal.

Tract LC–86–1–2 (0.98 acre)

Parcel 1 (0.05 acre)
Parcel 2 (0.93 acre)

The subject parcels are situated in the city of La Quinta, Riverside County, California, within the West one half of the East one half (W½E½) of Section Thirty-one (31), Township Five (5) South, Range Seven (7) East, San Bernardino Base and Meridian.

Appraised Fair Market Value (Minimum Bid)

Tract No. LC–86–1–1 $438,000
Tract No. LC–86–1–2 $62,750

Reservations:

(1) Tracts will be sold subject to easements or rights-of-way existing or of record in favor of the public as to third parties.

(2) Easements for Streets, Roads, and Public Utilities, Tract No. LC–86–1–1.

An easement for public roads now existing on said property in favor of the public.

Location:

These lands are located within the incorporated area of the city of La Quinta, California, approximately 3 miles apart, adjacent to areas presently being developed or proposed for residential and recreational development.

Access:

Physical and legal access to these lands is from Avenue 54 for Tract No. LC–86–1–1, and from Washington Street for Tract No. LC–86–1–2, both asphalt paved public roads.

Topography:

The lands are generally flat. Tract No. LC–86–1–1 was used as an equalizing reservoir and is surrounded by an earth levee. The levee is approximately 20 feet wide; the outside dike is approximately 8 feet in height; the inside height is approximately 15 feet.

Flood Potential:

Tract No. LC–86–1–1 is located in the area of the La Quinta storm drain and is classified as W–1, Water Course and Water Way. Storm runoff from the nearby foothills of the Santa Rosa Mountains Drains through the area of this tract.

Tract No. LC–86–1–2 is not in a flood zone.

Vegetation:

Tract LC–86–1–1

The bottom area is covered with several species of dead perennials and annuals, such as mustard and thistle. The edge of the levee is primarily bare with sparse occurrences of white bur-sage (*Ambrosia dumosa*).

Tract LC–86–1–2

Parcel 1 is approximately 90 percent bare ground with sparse occurrences of white bur-sage and salt-bush (*Atriplex sp.*).

Parcel 2 is approximately 95 percent bare ground with very sparse ocurrences of bur-sage and salt-bush.

Utilities:

Tract LC–86–1–1 is served with electricity, telephone, and irrigation water. Tract LC–86–1–2 is served with electricity, telephone, and irrigation water. Domestic water is available from Washington Street and sewer connections are available on Eisenhower Drive.

Land Use—Subject Parcels and Adjacent Lands

The subject tracts are located within the corporate limits of the city of La Quinta, California. Tract LC–86–1–1 is zoned A–1–10 which is for light agricultural, 10-acre Minimum Parcel size, low-density residential (two to four units per acre). The adjacent lands are being developed by Landmark Land Company in connection with a 2,300-acre residential and recreational development known as PGA West. Tract LC–86–1–2 is zoned R–2 which is multiple family residential with a general plan of low-density residential (two to four units per acre). The section in which it is located is generally undisturbed land with the adjacent lands planned for a residential and recreational development. Property lying across from the tract on Washington Street is a developed residential area surrounding a golf course.

[FR Doc. 86–3053 Filed 2–13–86; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 107X)]

Southern Pacific Transportation Co.—Abandonment Exemption—Sacramento County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Pacific Transportation Company of 2.3 miles of railroad in Sacramento County, CA, subject to standard employee protective conditions.

DATES: This exemption will be effective on March 17, 1986. Petitions to stay must be filed by February 25, 1986, and petitions for reconsideration must be filed by March 6, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 107X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: February 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–3270 Filed 2–13–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Applied Science Laboratories; Registration

By Notice dated November 18, 1985, and published in the **Federal Register** on November 25, 1985; (50 FR 227), Applied

Science Laboratories, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Dihydromorphine (9145)	I
D-iso-lysergic acid diethylamide (7307)	I
D-lysergic acid Methylpropylamide (7328)	I
Mescaline HCL (7387)	I
Cyclohexamine (PCE) HCL (7456)	I
1-phenylcyclohexylpyrrolidine HCL (7461)	I
Thiophene Analog of PCP (HCL salt) (7469)	I
Normorphine HCL (9360)	I
1-phenylcyclohexylmaine (7460)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Morphine (9300)	II
Dihydrocodeine (9120)	II
Phencyclidine HCL (7472)	II
Codeine-6-glucuronide (9069)	II
Norcodeine HCL (9115)	II
Ecgonine methyl ester (9185)	II
Ecgonine HCL (9189)	II
Ethylmorphine HCL (9191)	II
Dextropropoxyphene (9316)	II
6-Monoacetylmorphine (9316)	II

Pursuant to the provisions of Title 21 Code of Federal Regulations § 1301.43, any registered manufacturer of the listed substances, or any applicant for such registration, was invited to file comments or to request a hearing with respect to Applied Science Laboratories' application. One such comment was received. Mallinckrodt, Inc., a registered bulk manufacturer of several of the listed basic classes of controlled substances, noted that in 1984, in response to a similar notice of application, Mallinckrodt and McNeilab, Inc. had filed comments and a third manufacturer, Penick Corporation, had requested a hearing. The request for a hearing was withdrawn, and the concerns of the other commenters resolved, when DEA received assurances taht Applied Science Laboratories had no intention of manufacturing bulk quantities of controlled substances for resale to dosage form manufacturers.

The applicant is engaged in producing standards for chemical research and will continue to engage in that activity. Accordingly, Mallinckrodt's present comment poses no objection to the registration of Applied Science Laboratories.

Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 823, and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above-named firm, for registration as a bulk manufacturer of the basic classes of controlled substances listed above, be and it hereby is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 86-3296 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Eli Lilly Industries, Inc.; Registration

By Notice dated November 16, 1985, and published in the Federal Register on November 25, 1985; (50 FR 48500), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7 State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3297 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Sigma Chemical Co.; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 31, 1985, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Diethyltryptamine (7434)	I

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (March 17, 1986).

This procedure is to be conducted simultaneously with an independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3298 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Stepan Chemical Company Natural Products; Registration

By Notice dated June 4, 1985, and published in the Federal Register on June 10, 1985; (50 FR 24330), Stepan Chemical Company Natural Products, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of

the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registeration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3299 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Upjohn Co.; Registration

By Notice dated November 18, 1985, and published in the **Federal Register** on November 25, 1985; (50 FR 48501), Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7369)	I
Methamphetamine, its salts, isomers, and salt of its isomers (1105).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3300 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rate and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix , as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submiting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

These numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related acts" are listed by Volume, State, and page number(s).

Volume II

Oklahoma

OK86-15 ..... pp. 839a-839c.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates and publications in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY86-7 (Jan. 3, 1986)..... p. 695.
New York
NY86-17 (Jan. 3, 1986)..... p. 777.
Pennsylvania
PA86-2 (Jan. 3, 1986) p. 804
pp. 807-808 pp. 813-814..
Pennsylvania
PA86-18 (Jan. 3, 1986)..... pp. 912-917.
Pennsylvania
PA86-22 (Jan. 3, 1986)..... pp. 937-938.

Volume II

Iowa
IA86-3 (Jan. 3, 1986)..... p. 35.
Kansas
KS86-5 (Jan. 3, 1986)..... p. 324.
Louisiana
LA86-5 (Jan. 3, 1986)..... p. 374.
Oklahoma
OK86-13 (Jan. 3, 1986)..... pp. 824-829.
Listing by Location (Index)..... p. x1.
Listing by Decision (Index)..... p. 1iii.

Volume III

California
CA86-1 (Jan. 3, 1986)..... pp. 35-37.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since the subscriptions may be ordered for any or all of the three separate volumes, arranged by state. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of February 1986.

James L. Valin,

Assistant Administrotor.

[FR Doc. 86-3083 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-85-179-C]

Cedar Grove Mining Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cedar Grove Mining Inc., P.O. Box 007, Mousecard, Kentucky 41548 has filed a petition to modify the application of 30 CFR 75.1719 (illumination in working places) to its Cedar Grove No. 4 Mine (I.D. No. 15-15361) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all mobile equipment be equipped with illumination devices.

2. The coal seam ranges from 32 to 36 inches in height and once roof bolts are installed, there is clearance of only 31 inches in the working section.

3. Petitioner states that the lighting devices installed on the mining equipment have been subject to broken electrical conductors and broken glass, resulting in exposed energized components which present possible ignition sources for methane, creating a more hazardous condition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3323 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-175-C]

Kaiser Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kaiser Coal Corporation, P.O. Box D, Sunnyside, Utah 84539 has filed a petition to modify the application of 30 CFR 75.321 (stoppage of fans, plans) to its Sunnyside No. 1 Mine (I.D. No. 42-00093), its Sunnyside No. 2 Mine (I.D. No. 42-00094) and its Sunnyside No. 3 Mine (I.D. No. 42-00092) all located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that operators adopt a plan which will provide that when any mine fan stops, immediate action will be taken to withdraw all persons from the working sections, to cut off power in the mine in a timely manner, to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period and after a certified person has examined the working areas where methane is most likely to accumulate, and to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time.

2. Petitioner has three mines which are interconnected and ventilated by four fans. Different mines are not affected by the shutdown of different fans.

3. Petitioner proposes that, if a fan stoppage occurs, the following basic procedures will be followed:

a. The official in charge of underground operations will be notified promptly and communications will be maintained during the interruption;

b. All miners will be withdrawn from the working section to an area outby the loading point, and all power except that necessary to provide transportation for the miners out of the mine will be de-energized;

c. If the interruption of the fan(s) is for less than 15 minutes, power may be restored and work resumed after the working places and other active workings where methane is likely to accumulate are re-examined by a certified person or, if for greater than 15 minutes, all miners will be promptly withdrawn to the surface and all power de-energized in a timely manner to allow evacuation of the miners;

d. If the fan is restarted while the miners are leaving the mine, the miners will continue to the surface and remain there until a complete pre-shift examination of the mine is made after which they may return to their working sections and resume work. Power will not be restored to areas until they are examined; and

e. Upon restoration of normal ventilation and after the fan has been in operation for at least 15 minutes at normal water gauge, an examination will be made of the mine and conducted in accordance with the regular pre-shift examination requirements before the

miners are permitted to return or power re-energized to any part of the mine.

4. In the event of a power failure at either the No. 1 or No. 3 Mine, standby diesel motors activate automatically and operate the Whitmore Canyon and No. 3 Mine fans. Hence, fan stoppage means the fan is inoperable. If the diesel activates, activities proceed as normal.

5. Petitioner proposes the following exceptions to the basic procedures outlined above:

a. At the No. 1 Mine, power to the water pumps will not be de-energized unless methane concentrations of 1.5 volume percent or more are found. Sections or areas of the other mines not affected by a failure of the Whitmore Fan will continue to operate as normal;

b. At the No. 3 Mine, if the No. 3 Mine fan fails for longer than one hour, all miners in the No. 1 Mine will be withdrawn to the surface and remain there until the fan has operated for 15 minutes. If the Fan Canyon Fan fails, power to the water pumps in the No. 3 Mine will not be de-energized unless methane concentations of 1.5 volume percent or more are found. Sections or areas of any mine not affected by the failure will continue to operate as normal.

c. If the No. 2 Canyon Fan fails, power to the water pumps will not be de-energized unless methane concentations of 1.5 volume percent or more are found. Sections or areas of any mine not affected by the failure of this fan may continue to operate as normal.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3324 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-188-C]

Lackey Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lackey Coals, Incorporated, P.O. Box 284, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 3 B Mine (I.D. No. 46-06203) located in Braxton County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use spring-loaded metal locking devices in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated spring-loaded metal locking devices will be securely attached to the battery receptacles to prevent accidental loss of the devices.

3. Operators and maintenance personnel of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulation and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 86-3325 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-205-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 14495, St. Louis, Missouri 63178 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandonment) to its Tebo Mine (I.D. No. 23-00403) located in Henry County, Missouri. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a plan for abandoment contain provisions to preclude the probability of future impoundment of water.

2. As an alternative method, petitioner proposes to leave the Fresh Water Lake in its present impounding configuration and to turn it over to the current owner of the land on which it lies.

3. Mining activities at the Tebo Mine were suspended in 1979 and the decision was made to permanently close it. Final reclamation activities were begun in 1984 and should be near completion. No future mining activities are expected in the vicinity of the Fresh Water Lake, including the downstream area. The lake has been classified as a low hazard potential structure.

4. The current owner has expressed interest in and agreed to take over the operation, inspection and maintenance of the lake in a responsible and safe manner, which would necessitate abandonment of the impoundment by Peabody without first breaching or filling the structure.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3326 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-25-M]

Union Oil Company of California; Petition for Modification of Application of Mandatory Safety Standard

Union Oil Company of California, 2117 County Road 215, P.O. Box 76, Parachute, Colorado 81635 has filed a petition to modify the application of 30 CFR 57.11058 (check-in, check-out system) to its Parachute Creek Mine (I.D. No. 05-03143) located in Garfield County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator of an underground mine establish a check-in and check-out system which will provide an accurate record of persons in the mine. These records are to be kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazards. Every person underground shall carry a positive means of being identified.

2. As an alternate method, petitioner proposes to locate its primary check-in and check-out system in the underground lamp room. The lamp room is part of an underground office and change rooms complex.

3. Persons accessing the underground building complex enter and exit through a specially constructed 354 foot manway originating on the bench. These persons would check-in in the lamp room before proceeding further into the mine and would check-out before exiting the mine at the end of the shift.

5. Persons in vehicles entering the mine through the 100 and/or the 300 portals would proceed directly to the underground lamp room to check-in before proceeding any further into the mine.

6. The building is constructed of metal, and is equipped with an adequate number of strategically placed #20 dry chemical extinguishers. The start/stop switches for the main fans are located in this building and the fire alarm activating switches can be activated from this building.

7. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3327 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-187-C]

Southern Utah Fuel Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Utah Fuel company, P.O. Box P, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Southern Utah Fuel mine (I.D. No 42-00089) located in Sevier County, Utah. The petition is filed under Section 101(c) of the Frderal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return air courses be separated from belt haulage entries.

2. Due to ground control problems encountered in a three-entry system, petitioner proposes to develop a longwall mine through a two-entry panel system. This will require utilization of the panel belt entry as a return aircourse during development and as an intake aircourse during longwall mining operations.

3. In further support of this request petitioner states that:

a. Weekly examinations will be conducted and recorded to verify travelability of the tailgate entry;

b. Two complete sets of SCSR units will be provided for each longwall crew;

c. Low-level carbon monoxide monitors will be installed in all intake excapeways of all longwall development entries and longwall panels;

d. All longwall panel overcasts and stoppings will be structurally equivalent to an eight inch hollow-core concrete block stopping with mortared joints;

e. All electrically-powered equipment used on longwall development or on longwall panels will use fire-resistant hydraulic fluid or be protected by a fire-suppression system; and

f. Branch and feeder circuits located in the longwall development and panel entries will be provided with sensitive ground fault protection.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All coments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3010 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a)a.

DATE: Comments must be received in writing on or before April 15, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street NW, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration (N1–AFU–86–19). Family Support Centers records.

2. Department of the Air Force, Directorate of Administration (N1–AFU–86–24). On/Off Base Housing Records.

3. Department of the Air Force, Directorate of Administration (N1–AFU–86–25). Manpower standards application records and commercial activities cost comparision studies.

4. Department of the Army, Records Management Operations Office (N1–AU–86–6). Case files pertaining to commercial arms export licenses.

5. Department of the Army, Records Management Operations Office N1–AU–86–11. Test material inventory files.

6. Department of Commerce, Office of the Secretary, Administrative Law Judge (NC1–40–85–2). Subject files and civil penalty files.

7. Department of Commerce, Office of the Secretary, Office of Finance and Federal Assistance (N1–40–86–1). Records relating to financial assistance administration, accounting matters, and travel management.

8. Department of Commerce, bureau of International Programs (N1–151–86–1). Press clippings, trade reports, and correspondence relating to European trade regulations, 1930–56.

9. Department of Commerce, Foreign Economic Administration, Office of Economic Warfare (NC1–169–85–1). Case papers and subject files relating to settlement of claims.

10. Office of the Secretary of Defense (N1–330–86–1, and N1–330– 86–2). Records relating to the administration of the Department of Defense Civilian Health and Medical Program of the Uniform Services (CHAMPUS) consisting of case files involving contractor claims, appeals and hearings, certification of institutional providers of health care, recoupment of funds, fraud and abuse, and related litigation.

11. Environmental Protection Agency, Occupational Health and Safety Staff (NC1–412–85–8). Occupational health and safety records.

12. Department of Labor, Office of Workers' Compensation Programs (N1–271–86–1). A modification of retention periods for records pertaining to Black Lung Benefit claims and benefit payments.

13. National Archives and Records Administration. Kansas City Regional Archives Branch (NC2–75–85–1). Records of cash and check remittances received and forwarded by the Pierre Indian School of the Bureau of Indian Affairs, 1949–60.

14. Office of Personnel Management, Information Management Division (NC1–146–84–1). Records relating to the development of pay and leave regulations for Federal employees and working papers relating to the development of classification and qualification standards for Federal job series.

15. Department of State, Bureau of European and Canadian Affairs, Office of Soviet Union (NC1–59–85–4). Correspondence and case files relating to consular issues, resolved and inactive emigration cases and binational marriage cases.

16. Tennessee Valley Authority, Office of Natural Resources and Economic Development, Division of Air and Water Resources, Flood Protection Branch (NC1–142–85–7 and NC1–142–85–8). Flood routing studies and reservoir flood information used in the management of the agency's flood control program in the Tennessee River Valley.

17. Department of the Treasury, Bureau of the Public Debt, Division of Securities Operations (N1–53–86–2). Treasury and agency securities interest coupons, redeemed, unissued and unmatured.

18. Department of the Treasury, Internal Revenue Service, Appeals Division, National Office (NC1–58–82–8). Statistical tables of cases in the U.S. Tax Court, 1967–68, and a preliminary case study relating to the plywood industry, 1960

Dated: February 7, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–3244 Filed 2–13–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee.

Date: Thursday, March 6, 1986.

Time: 9 a.m. to 5 p.m.

Place: Rm. 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mrs. Lois J. Hamaty, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, DC 20550. Telephone: 202/357–7512.

Purpose of Committee: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review nominations, with supporting documentation, as part of the selection process for the Award.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: The determination made on February 7, 1986 by the Director of the National Science Foundation pursuant to the provisions of Section 10(d) of Pub. L. 92–463.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–3329 Filed 2–13–86; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Physics, Subcommittee for Review of the NSF Gravitational Physics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics; Subcommittee for the Review of the NSF Gravitational Physics Program.

Date and Time: March 3, 1986; 9:00 a.m. to 6:00 p.m.; March 4, 1986; 9:00 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street NW., Washington, DC 20550

Type of Meeting: Closed.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550; Telephone (202) 357–7985.

Purpose of Subcommittee: To provide oversight concerning NSF support and planning for research in gravitational physics.

Agenda: To review NSF Gravitational Physics Program documentation as part of the program oversight function.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–3330 Filed 2–13–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456–OL, 50–457–OL and ASLBP No. 79–410–03–OL]

Commonwealth Edison Co.; Braidwood Station, Unit Nos. 1 and 2; Hearing

Before Administrative Judges: Herbert Grossman, Chairman, Richard F. Cole, A. Dixon Callihan.

February 10, 1986.

Please take notice that at 9:00 a.m. on March 11, 1986 at the Will County Courthouse, Courtroom #313, at 14 West Jefferson Street, Joliet, Illinois, 60431, the evidentiary hearing will reconvene. It will continue until all of the remaining emergency planning issues are concluded. No other issues will be heard at this hearing session.

The public is invited to attend.

For The Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 86–3315 Filed 2–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

Correction

In FR Doc. 86–1465, beginning on page 3132 in the issue of Thursday, January 23, 1986, make the following correction: On page 3132, in the last line of the middle column, "$2.7x10^5$" should read "$2.7x10^{-5}$".

BILLING CODE 1505-01-M

[Docket No. 50–414]

Duke Power Co. et al. Catawba Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of partial exemptions from the requirements of Appendices A and J to 10 CFR Part 50 to Duke Power Company, North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency (the licensees) for the Catawba Nuclear Station, Unit 2, located at the licensees' site in York County, South Carolina.

Environmental Assessment

Identification of Proposed Actions: The first proposed exemption would provide relief to the licensees, in relation to General Design Criteria (GDC) 16, 38 and 50 of Appendix A to 10 CFR Part 50, from completing ice loading, ice weighing and reinstallation of ice condenser components prior to fuel load. These items will be completed prior to the Reactor Collant System (RCS) temperatures' exceeding 200 degrees F (Mode 4). The ice condenser is not required to be operable in Modes 5 and 6 because there is insufficient energy stored in the RCS to challenge containment integrity, and the unit will have no fission product inventory. The second exemption would relieve licensees from the requirement of conducting a full pressure airlock leakage test, pursuant to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, whenever airlocks are opened during periods when containment integrity is not required.

Licensees would rely, instead, on the seal leakage test decribed in Paragraph III.D2(b)(iii) when the reactor is in cold shutdown (Mode 5) or refueling (Mode 6) and when no maintenance has been performed on the airlock. The third exemption would relieve the licensees from complying with Paragraph III.B of Appendix J insofar as it requires that a type B leakage rate test be performed, at full pressure (Pa, peak calculated accident pressure), on piping penetrations fitted with expansion bellows. The fourth exemption would allow licensees to exclude certain piping which penetrates the containment from the venting and draining requirements in Paragraph III.A.1(d) of Appendix J. These types of exemption were previously approved and granted for Catawba Unit 1.

Licensees' requests for exemptions and the bases therefor are contained in letters dated July 30, 1985, December 17, 1985 and January 21, 1986. *The Need for the Proposed Actions:* The partial exemption from GDCs 16, 38 and 50 regarding completion of the ice loading and weighing and reinstallation of ice condenser components is needed to allow efficient and expeditious fuel loading and testing of facility components prior to completion of the ice condenser which may not be completed for several weeks after fuel loading. Thus partial exemption from the above GDCs, when the ice condenser is not required, would provide the licensees with greater plant availability to perform precriticality testing. The second exemption, described in the staff's Safety Evaluation Report, Supplements 3 and 4, for Catawba Nuclear Station, is from performance of the leakage rate test required by Paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J, which takes at least 6 hours per airlock. Exemption from full pressure leakage tests on airlocks opened during a period when containment integrity is not required would provide the licensees with greater plant availability over the lifetime of the plant. Exemption from Type B leakage rate tests on piping penetrations fitted with expansion bellows is required because the bellows design for mechanical penetration will not allow the space to be pressurized to peak accident pressure, Pa, as required by Paragraph III.B of Appendix J. Exemption of certain piping penetrations from the Appendix J venting and draining requirements is needed to prevent leakage, during Integrated Leak Rate Tests, through process containment isolation valves which receive a sealing fluid.

Environmental Impacts of Proposed Actions: The first proposed exemption would permit fuel loading and precriticality testing when the unit is in cold shutdown (Mode 5). During this time period, the unit will have no fission product inventory and the RCS has insufficient energy to challenge containment integrity. This exemption

does not affect the risk of facility accidents. Thus, post-accident radiological releases will not, due to the proposed exemption, be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed exemption.

The second proposed exemption would permit the substitution of an airlock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure airlock test otherwise required by Paragraph III.D.2(b)(ii) when the airlock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by III.D.2(b) (i) and (iii) are current, no maintenance having been performed on the airlock and with it properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

The third proposed exemption will provide alternative tests of piping penetrations fitted with expansion bellows such that there is adequate assurance that containment integrity is not affected. Appendix J requires that leak testing of expansion bellows assemblies on containment penetrations be conducted at a test pressure of Pa, the peak calculated accident pressure; for the Catawba plant, Pa is 14.7 psig. The bellows assemblies cannot be pressurized beyond 3 to 5 psig. The exemption, therefore, is form the requirement that the test pressure equal Pa. During testing of the bellows assemblies, the inner ply is pressurized in a direction opposite to that which would be imposed in the event of an accident. Testing at Pa would jeopardize integrity of the inner ply. Alternatively, stiffening of the inner ply to better accommodate an increased test pressure would necessitate engineering compromises contrary to overall safety. Since the expansion bellows must flex during plant heat-up and cooldown, additional rigidity would increase the likelihood of inner ply failure. However, the proposed test pressure (3 to 5 psig) is sufficient for monitoring bellows assembly integrity. Therefore, from the standpoint of overall safety, plant operation with the exemption is at least as safe as requiring compliance with the leak testing requirement of the regulations. Consequently, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

The fourth proposed exemption will allow the licensees to use an alternative to the vent and drain method for accounting for the leakage of certain containment isolation valves. Granting of this exemption would allow use during Integrated Leak Rate Tests (ILRTs) of the seal water system which has been installed at Catawba. Containment isloation valves served by this system will not leak containment atmosphere to the environment during an accident and so need not be exposed to test pressure by being vented and drained during ILRTs. Other valves which are not served by the seal water system, but which are in the lines to be exempted from the venting and draining requirements, will be subjected to local leakage rate testing and the results will be added to the ILRT results. Thus, all leakage will be accounted for. Consequently, the post-accident radiological releases will not be greater with the alternative tests than they would be without the requested exemption, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Actions: Because we have concluded that there is no measurable environmental impact associated with the proposed exemptions, any alternatives to the exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemptions. Such action would not reduce environmental impacts of Catawba Unit 2 operations and would result in reduced operational flexibility or unwarranted delays in power ascension.

Alternative Use of Resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2," dated January 1983.

Agencies and Persons Consulted: The NRC staff reviewed the licensees' requests that support the proposed exemptions. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemptions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to the proposed actions, see the licensees' requests for exemptions dated July 30, 1985, December 17, 1985, and January 21, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 11th day of February 1986.

For the Nuclear Regulatory Commission.

Dari Hood,

Acting Director, PWR Project Directorate #4, Division of PWR Licensing–A, NRR.

[FR Doc. 86–3313 Filed 2–13–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–70]

General Electric Co., General Electric Test Reactor; Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. TR–1 for the General Electric Company (the licensee)

which renews the license for possession only of the test reactor located at Vallecitos Nuclear Center in Alameda County, California. The renewed Operating License No. TR–1 will expire on October 1, 1992.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notices of the proposed issuance of this renewal in the **Federal Register** on September 15, 1977 at 42 FR 46427 and on September 11, 1985 at 50 FR 37083.

Following the September 15, 1977 notice, six individuals and groups filed a petition to intervene. From 1977 to 1983, litigation on a Commission Order to Show Cause interrupted the renewal proceeding. In August 1982 the Atomic Safety and Licensing Board (ASLB) in the Show Cause proceeding found in favor of continued operation, subject to certain conditions. This finding subsequently was upheld by the Atomic Safety and Licensing Appeal Board and the Commission.

Following notification of General Electric Company's plan to continue operation of the facility, a reconstituted Atomic Safety and Licensing Board contacted the original intervenors and determined that only one intervenor timely demonstrated an interest in proceeding with hearings on GE's license renewal request. Following a prehearing conference and other proceedings, an agreement between GE and the intervenor was reached whereby the licensee agreed to modify its renewal application to request a possession only status and the intervenor agreed to withdraw his opposition to the license renewal request. On April 23, 1985, the proceeding was terminated by the ASLB. No request for a hearing or petition for leave to intervene was filed following notice of the proposed possession only action on September 11, 1985.

The Commission has prepared a Safety Evaluation for the renewal of Facility Operating License No. TR–1 and has, based on that report, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Facility Operating License No. TR–1 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for renewal dated October 21, 1975, as supplemented, and the possession only request dated June 26, 1985, as supplemented July 15, 1985, (2) Amendment No. 14 to Facility Operating License TR–1, (3) the Commission's related Safety Evaluation and (4) the Environmental Assessment and Finding of No Significant Environmental Impact. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 5th day of February 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing–B.

[FR Doc. 86–3316 Filed 2–13–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–410A]

Niagara Mohawk Power Corp. et al.; Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 2 of the Nine Mile Point Nuclear Power Station. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director of the Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Nine Mile Point Unit 2 construction permit to Niagara Mohawk Power Corporation, *et al.*, the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation, and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in the state of New York, the events revelant to the Nine Mile Point, Unit 2 construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

The conclusion of the staff's analysis is as follows:

Nine Mile Point Nuclear Station, Unit 2 (NMP 2) is to be jointly owned by five investor owned utilities in New York as follows:

	Percent
Niagara Mohawk Power Corp	41
Long Island Lighting Co	18
New York State Electric and Gas Corp	18
Rochester Gas and Electric Corp	14
General Hudson Gas and Electric Corp	9

The five co-owners of NMP 2 received antitrust reviews by the Department of Justice with respect to their participation in NMP 2 and in various other planned nuclear generating plants during the period from 1972 through 1978. The Attorney General, in his antitrust advice letters to the Nuclear Regulatory Commission, expressed concern only with respect to Niagara. One concern was that Niagara might not be willing to wheel power for the Jamestown municipal electric system if Jamestown decided to purchase at wholesale all of its electric power requirements. The other concern regarded Niagara's continuing opposition to the efforts of the town of Messena to establish a municipal electric system. Although the Attorney General did not recommend a hearing, he did advise the Commisison to monitor the subsequent activities of Niagara with respect to these two issues.

Subsequently, Jamestown decided to install electrostatic precipitators on its coal fired plants rather than purchase its total power requirements. Also, Messena has established a distribution system, and Niagara has agreed to wheel power to Messena. Thus, the two concerns expressed by the Attorney General have been resolved.

Staff's review of changes in load forecasts, capacity expansion programs, and rate schedules does not suggest any anticompetitive effects. New York State Electric and Gas Corporation's acquisition of the Peach Lake system did not significantly alter regional market concentration and was a business transaction with no apparent consumer or regulatory opposition.

In light of the Commission's guiding criteria, none of the changes which have been surfaced in this review can be considered "significant", and therefore, staff does not recommend a finding of "significant change."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of Nine Mile Point, Unit 2 is not required.

Signed on February 6, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the Federal Register notice.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated in Bethesda, Maryland on February 10, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-3317 Filed 2-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445]

Texas Utilities Electric Co. et al., Commanche Peak Steam Electric Station, Unit 1; Order Extending Latest Construction Completion Date

The Texas Utilities Electric Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc. (Applicants) are the holders of Construction Permit No. CPPR-126 issued by the Atomic Energy Commission [1] on December 19, 1974 for construction of the Comanche Peak Steam Electric Station Unit 1, a nuclear facility utilizing a Westinghouse Electric Corporation nuclear steam supply system presently under construction at the Applicants' site in Somervell County, Texas.

By letter dated January 29, 1986, as supplemented on February 4, 1986, the Applicants filed a request for extension of the latest construction completion date specified in Construction Permit No. CPPR-126 to August 1, 1988. The Applicants state that, although construction on Comanche Peak Unit 1 was essentially completed early in 1985, major efforts to reinspect and reanalyze various structures, systems, and components are currently underway. These efforts are being conducted by the Applicants' Comanche Peak Response Team to verify both design and construction adequacy as well as to respond to numerous issues raised in the operating license proceeding by the NRC's Technical Review Team, and by other sources. This activity has been ongoing since the fall of 1984. The Applicants anticipate that it will not be complete before the second quarter of 1986. Because of uncertainties associated with these activities and with the hearing process, the Applicants request an extension until August 1, 1988 to cover such contingencies.

As discussed more fully in the staff's related Evaluation of Request dated February 10, 1986, we have concluded that good cause has been shown for the delay, and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore no prior public notice is required.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the Federal Register on February 7, 1986 (51 FR 4834). The NRC staff has concluded that this action will not have a significant impact on the quality of the human environment and therefore no environmental impact statement need be prepared.

The Applicants' letter dated January 29, 1986, as supplemented on February 4, 1986, and the NRC staff's letter and evaluation dated February 10, 1986 issued in support of this Order are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Somervell County Public Library, On the Square Glen Rose, Texas 76043.

It is hereby ordered that the latest completion date for CPPR-126 be extended to August 1, 1988.

Date of Issuance: February 10, 1986.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 86-3318 Filed 2-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Callaway Plant, Unit 1

Notice is hereby given that the Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Alan S. Nemes, Esq. on behalf of Missouri Coalition for the Environment and Kay Drey. This petition is related to the Callaway Plant, Unit 1. In the petition, Missouri Coalition for the Environment and Kay Drey alleged that the Union Electric Company's revoking the certification of quality control inspectors found to have questionable qualifications in early 1985 raised questions as to the adequacy of the inspection process and the safety of the Callaway Plant. In addition, they alleged that the failure of Union Electric Company's management to identify the problem with inspector qualifications for at least four years showed that the utility violated its legal obligation to continually monitor safety inspections at the plant and to provide inspectors with direct access to levels of management sufficient to assure prompt reaction to safety violations.

The reasons for the denial of the petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the local public document room for the Callaway Plant, located at the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, MO 63130. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 10th day of February, 1986.

For The Nuclear Regulatory Commission

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-3319 Filed 2-13-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

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[1] Effective January 20, 1975, the Atomic Energy Commission was abolished and its regulatory authority transferred to the Nuclear Regulatory Commission.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on December 24, 1985 (50 FR 52573). Individual authorities established or revoked under Schedule A, B, or C between December 1, 1985 and December 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked in December.

Schedule B

No Schedule B exceptions were established or revoked in December.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Deputy Assistant Secretary for Natural Resources and Environment. Effective December 2, 1985.

One Private Secretary to the Assistant Secretary for Governmental and Public Affairs. Effective December 4, 1985.

One Confidential Assistant to the Secretary. Effective December 31, 1985.

Department of the Air Force

One Staff Assistant to the Secretary of the Air Force. Effective December 5, 1985.

Agency for International Development

One Supervisory Public Affairs Specialist to the Deputy Assistant Administrator, Bureau for External Affairs. Effective December 18, 1985.

One Supervisory Public Affairs Specialist to the Supervisory Public Affairs Specialist. Effective December 18, 1985.

Commission on Civil Rights

One Special Assistant to the Vice Chairman, with duty location in New York, New York. Effective December 2, 1985.

One Deputy General Counsel to the General Counsel. Effective December 9, 1985.

One Special Assistant to the Staff Director. Effective December 9, 1985.

One Special Assistant to the General Counsel. Effective December 20, 1985.

Department of Commerce

One Special Assistant to the Administrator, National Oceanic and Atmospheric Administration. Effective December 6, 1985.

One Confidential Assistant to the Special Assistant to the Secretary. Effective December 16, 1985.

One Confidential Assistant to the Assistant Secretary for Trade Administration. Effective December 19, 1985.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective December 31, 1985.

Consumer Product Safety Commission

One Special Assistant to a Commissioner. Effective December 31, 1985.

One Special Assistant to a Commissioner. Effective December 31, 1985.

Department of Defense

One Private Secretary to the Assistant Secretary of Defense (International Security Policy). Effective December 31, 1985.

One Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Policy). Effective December 31, 1985.

Department of Energy

One Principal House Liaison Specialist to the Director, Office of Congressional Affairs. Effective December 3, 1985.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective December 5, 1985.

One Staff Assistant to the Special Assistant to the Secretary. Effective December 10, 1985.

One Technical Advisor to a Member of the Federal Energy Regulatory Commission. Effective December 10, 1985.

One Special Assistant to the Assistant Secretary for Defense Programs. Effective December 30, 1985.

Three Legal Advisors to three Members of the Federal Energy Regulatory Commission. Effective December 31, 1985.

One Confidential Assistant (Secretary) to the General Counsel. Effective December 31, 1985.

Department of Transportation

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective December 10, 1985.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective December 10, 1985.

One Director, Special Operations Division to the Deputy Assistant Secretary for Administration. Effective December 12, 1985.

One Special Assistant to the Executive Secretary. Effective December 20, 1985.

Two Staff Assistants to the Deputy Secretary. Effective December 30, 1985.

One Special Assistant to the Director, Executive Secretariat. Effective December 30, 1985.

One Receptionist to the Deputy Secretary. Effective December 30, 1985.

Department of Education

One Confidential Assistant to the Deputy Under Secretary for Management. Effective December 2, 1985.

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective December 2, 1985.

One Special Assistant to the Under Secretary. Effective December 20, 1985.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective December 20, 1985.

One Special Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of the Assistant Secretary for Educational Research and Improvement. Effective December 20, 1985.

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective December 20, 1985.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective December 20, 1985.

One Special Assistant to the Director, Intergovernmental Affairs. Effective December 20, 1985.

One Director, Historically Black Colleges and Universities Staff, to the Assistant Secretary for Postsecondary Education. Effective December 31, 1985.

One Director, Regional Liaison, to the Under Secretary. Effective December 31, 1985.

Environmental Protection Agency

One Special Assistant to the Deputy Administrator. Effective December 18, 1985.

One Special Assistant to the Assistant Administrator, Office of Water. Effective December 18, 1985.

One Special Assistant to the Deputy Administrator. Effective December 20, 1985.

Federal Home Loan Bank Board

One Director of Communications to the Chairman. Effective December 2, 1985.

Department of Housing and Urban Development

One Special Advisor to the Assistant Secretary for Legislation and Congressional Relations. Effective December 17, 1985.

One Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective December 17, 1985.

One Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs. Effective December 17, 1985.

One Special Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation, Office of Community Planning and Development. Effective December 20, 1985.

Department of Interior

One Confidential Assistant to the Assistant to the Secretary and Director of External Affairs. Effective December 19, 1985.

One Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks. Effective December 31, 1985.

International Trade Commission

One Confidential Assistant to a Commissioner. Effective December 11, 1985.

Department of Justice

One Special Assistant to the Assistant Attorney General, Office of Legal Policy. Effective December 2, 1985.

One Public Affairs Specialist to the Deputy Director, Office of Public Affairs. Effective December 2, 1985.

One Deputy Assistant Attorney General, Civil Rights Division. Effective December 2, 1985.

One Attorney Advisor (General) to the Assistant Attorney General, Antitrust Division. Effective December 5, 1985.

One Special Assistant to the Assistant Attorney General, Office of Legislative and Intergovernmental Affairs. Effective December 10, 1985.

One Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective December 16, 1985.

One Director, Regulatory and Legislative Affairs Staff, to the Assistant Attorney General, Civil Division. Effective December 19, 1985.

Department of Labor

One Executive Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective December 2, 1985.

One Special Assistant to the Assistant Secretary for the Occupational Safety and Health Administration. Effective December 6, 1985.

One Staff Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective December 10, 1985.

One Special Assistant to the Assistant Secretary for the Employment and Training Administration. Effective December 10, 1985.

One Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective December 11, 1985.

One Confidential Staff Assistant to the Assistant Secretary for the Employment and Training Administration. Effective December 20, 1985.

One Regional Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs, with duty location in Denver, Colorado. Effective December 20, 1985.

One Special Assistant to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. Effective December 20, 1985.

One Special Assistant to the Secretary. Effective December 31, 1985.

National Aeronautics and Space Administration

One Secretary (Stenography) to the Deputy Administrator. Effective December 11, 1985.

One Secretary (Stenography) to the Deputy Administrator. Effective December 31, 1985.

National Credit Union Administration

One Executive Assistant to the Chairman. Effective December 2, 1985.

One Confidential Assistant to the Chairman. Effective December 9, 1985.

National Endowment for the Humanities

One Special Assistant to the Chairman. Effective December 6, 1985.

National Transportation Safety Board

One Secretary (Typing) to the Chairman. Effective December 2, 1985.

Office of Management and Budget

One Staff Assistant to the Administrator, Office on Information and Regulatory Affairs. Effective December 10, 1985.

One Confidential Assistant to the Executive Associate Director for Budget and Legislation. Effective December 31, 1985.

Pension Benefit Guaranty Corporation

One Secretary (Stenography) to the Executive Director. Effective December 10, 1985.

Small Business Administration

One Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective December 31, 1985.

One Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development. Effective December 31, 1985.

Securities and Exchange Commission

Two Confidential Assistants to two Commissioners. Effective December 12, 1985.

Department of State

One Staff Assistant to the Assistant Secretary for the Bureau of Human Rights and Humanitarian Affairs. Effective December 9, 1985.

One Protocol Officer (Ceremonials) to the Chief of Protocol. Effective December 19, 1985.

Department of the Treasury

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective December 2, 1985.

United States Trade Representative

One Confidential Secretary to the General Counsel. Effective December 31, 1985.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-3284 Filed 2-13-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22879; File No. SR-CBOE-85-22]

Self-Regulating Organizations; Amendment No. 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to the Electronic Routing of Options Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission Amendment No. 2 to the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The electronic routing of orders to the book, under the Exchange's Order Support System ("OSS"), and parameters for OSS were described generally in SR-CBOE-84-12.[1] Until further notice, the "C" parameter will apply to OSS in the classes of options on over-the-counter ("OTC") stocks. In addition, CBOE proposes that OSS be utilized to route orders on options on stocks selected by the Exchange to printers at trading posts for handling by floor brokers.

The proposal to grant CBOE the discretion to select those options for which OSS may be utilized is an amendment to a previous proposal which would have permitted the electronic routing of OSS-eligible options orders on "OTC" stocks to a printer at the trading post for direct representation by floor brokers in the trading crowd.[2] The proposal as originally submitted to the Commission was not approved in order that the CBOE could clarify how the process would work. This amendment to the proposed rule change is intended to broaden the options classes where the crowd printer may be used, and to describe more fully how the process will work.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Floor broker routing is intended to afford member firms the ability to route orders to a printer at the trading crowd rather than have the order print at the firm's booth, from which the orders need to be taken by hand to the crowd and back. This will expedite both the delivery of orders and fill reporting. OSS currently allows a firm's public customer orders to be routed to two destinations only, the book and the booth. The order will be directed to the book, if not at or within the prevailing parameter. Otherwise, at present the order is routed to the firm's booth on the floor, from where it is handled manually. Each firm can set its own parameters on OSS routing, so long as the parameter is not less restrictive than the Exchange's parameter. Thus, if an options class is at the "C" parameter for up to 300 contracts, a firm could, for example, establish a parameter that only orders of up to 10 contracts and a ½ point away from the market are to be routed to the book, all others to go to the booth.

Under this proposed rule change, member firms, rather than having an order go to the booth, may have an OSS order print at the trading crowd when the parameters do not allow the order to be accepted by the book. The firm will have the ability to set parameters for routing orders to the book, the printer at the crowd, and the booth, or to set one parameter for routing orders to the book with all others going either to the crowd printer or the booth. This feature only will be available at such trading stations as the Exchange in its discretion so equips.

Where available, there will be a printer at or adjacent to the trading crowd, which printer will print out orders to be handled in the crowd. The printer will be staffed by one or more Exchange employees. In order to be eligible to use this system, a firm will designate a floor broker to receive orders at a particular station, agree that the designated floor broker assumes responsibility for the order once it is printed, and that if the designated floor broker is unavailable when an order is printed, the Exchange representative will hand the order to another floor broker in the trading crowd. The designated floor broker may be an independent or house broker.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the Exchange's Office of the Chairman approved this amendment to the rule change on January 20, 1986.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3332 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[1] SR-CBOE-84-12 was noticed and approved in Securities Exchange Act Release No. 20811 (April 2, 1984), 49 FR 13932.

[2] SR-CBOE-85-22 and Amendment No. 1 to the rule filing were noticed in Securities Exchange Act Release No. 22105 (May 31, 1985), 50 FR 24073. The Commission at that time approved that part of the proposal which imposed narrow price parameters in connection with the use of OSS for classes of options on OTC stocks.

[Release No. 34-22876; File No. SR-CBOE-86-04]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Index Option Expiration Months

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 29, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would give the Exchange limited flexibility in adding expiration months in index option contracts by providing that there may be up to five expiration months, none further out than twelve months.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to give the Exchange limited flexibility in adding expiration months in index option contracts in order to avoid unnecessary rule change filings. The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in index option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3333 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22881; File No. SR-NYSE-86-06]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc.; Relating To Extending the Close of NYSE Index Options Trading From 4:10 P.M. to 4:15 P.M.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 4, 1986 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 700 series of Rules, as follows:

(Brackets indicate language deleted; italics indicate language added.)

Trading Rotations, Halts and Suspensions

Rule 717. (a) through (c) No change.

. . . Supplementary Material:

.10 (a) through (b) No change.

(c) A closing rotation in expiring *stock option* series initiated on the business day prior to the expiration date in accordance with paragraphs (e) of Rule 703 (Series of Options Open for Trading) and (a)(iv) of this Rule [(in the case of a stock option) or paragraph (a)(iii) (in the case of an index stock group option)] shall commence at 4:00 p.m. *If, in accordance with paragraph (a)(iii) of this Rule, a closing rotation in index stock group options is deemed necessary, such closing rotation shall commence at 4:15 p.m.* Orders may be entered, modified or canceled in a particular expiring series until the commencement of the rotation in such series. The Specialist shall proceed in the following manner: Taking each class in which he is acting in turn, the Specialist should generally close the one or more series of each class having the lowest exercise price and so forth, until all series have been closed. Except as otherwise provided by the Exchange, if both puts and calls covering the same stock or index stock group are traded, the Specialist may determine which type of options should close first, and may alternate the closing of put series and call series or may close all series of one type before closing any series of the

other type, depending on current market conditions.

.20 through .60 No change.

* * * * *

Exercise of Option Contracts

Rule 780. (a) through (c) No change.

. . . Supplementary Material:

.10 The following additional procedures shall apply to the exercise of index stock group options.

(a) A member organization shall not tender an exercise notice unless it has received or prepared a memorandum in respect of the exercise by no later than [4:10] *4:15* p.m. New York time and has time-stamped the memorandum at the time it is received or prepared. In the event a member organization receives an exercise instruction or tenders an exercise notice pursuant to one of the exceptions set forth in the third sentence of paragraph (b) of this Rule, the member organization shall prepare a memorandum setting forth the circumstances giving rise to such exception.

(b) In the case of exercises of 25 or more contracts of the same series on the same business day on behalf of any account, each member or member organization shall also deliver an "exercise advice" in *a* form prescribed by the Exchange, to a place designated by the Exchange no later than [4:10] *4:15* p.m. New York time. For purposes of this paragraph (b), exercises for all accounts controlled by the same individual must be aggregated.

(c) Member organizations must accept exercise instructions until [4:10] *4:15* p.m. New York time, except that they may impose an earlier deadline for contracts subject to paragraph (c) of this Rule in order to allow a reasonable amount of time for compliance with that paragraph. The [4:10] *4:15* p.m. deadline for receipt and acceptance of exercise instructions, for delivery of exercise advices and for preparation of exercise memoranda is not applicable to expiring series on the business day prior to expiration.

* * * * *

Rule 792. (a) Except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for business on every business day, excluding Saturdays, and the hours during which options transactions may be made on the Floor shall correspond to the hours set forth in Rule 51 (Hours for Business), plus an additional ten minute period following the referent hours *for stock options and an additional fifteen minute period for index stock group options.*

No further changes to Rule 792.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Through an amendment to Rule 792, the proposed rule change will extend open trading in index options contracts from 4:10 p.m. to 4:15 p.m. The changes to Rule 717.10(c) clarify that open trading in all index option series continues until the close of trading, even on the business day prior to expiration, and that should a closing rotation in index options be necessary, it should commence at 4:15 p.m. as well. Amendments to Rule 780.10 extend the deadline for submission of exercise memoranda and advices to 4:15 p.m. to coincide with the end of trading.

The proposed rule change coordinates the close of trading in options on the NYSE Composite and Double Indices ("NYA" and "NDX", respectively) with the close of trading of futures contracts on the NYSE Composite Index and on other broad based stock market indices. Futures and options on identical or very similar indices allow investors and traders to hedge their positions in one contract with positions in the other. Positions held in NYSE Composite Index futures are frequently offset with positions in NYA or NDX options and positions held in NYSE index options are offset by the same futures contracts. The current difference in closing times hobbles the adjustment of risk by investors and traders with futures-options offsetting positions. Synchronizing the closing times will solve this problem. The identical closing times should also add to the depth and liquidity of the market in index options.

With heavier stock trading volumes, particularly at the close of trading on the Exchange's equity floor, the "run-off" of closing stock transactions can occasionally go beyond 4:10 p.m. While only small changes to the NYSE Composite Index value have occurred in the period after 4:10 p.m., the additional five minutes will allow trading based on a more complete picture of the market's close.

The statutory basis of the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"). The proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change concurrent with approval of CBOE–85–49 and Amex 86–2, which propose to extend trading in their broad based index options to 4:15 p.m. The terms of the proposed rule change is substantively identical to the rule changes mentioned above. (See Release No. 34–22790 (January 13, 1096) 51 FR 2614 (January 17, 1986).)

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

February 7, 1986.

[FR Doc. 86-3334 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22872; SR-PSE-85-38]

Self Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Immediate Effectiveness to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1985, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In 1984 in connection with the relocation of its options trading floor, the PSE installed a conduit for cables linking its San Francisco equities and options trading floors. The conduit contains 30 coaxial cables and eight 25-pair telephone cables. The Exchange is currently providing, without charge, the use of one 25-pair telephone cable to three member organizations, at their request. Use of these cables results in substantial monthly savings to these member organizations, which would otherwise use external telephone lines and equipment between their equities and options operations.

At this time, the Exchange is proposing to implement monthly service charges for the use of these cables by its members, as follows: $40.00 per month for the use of each coaxial cable; $20.00 per month for each pair of telephone cables; $32.00 per month for the use of two pair of telephone cables; and $320.00 per month for the use of an entire 25-pair telephone cable. These charges are intended to permit the Exchange to recover the costs associated with the installation and maintenance of the conduit and cables.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the Exchange is currently providing the use of certain cables linking its San Francisco equities and options trading floors to several member organizations at no charge to them. In addition, at least one other firm has expressed an interest in using these facilities. The PSE has advised these organizations of its intention to impose reasonable monthly charges for this service. The proposed monthly charges are intended to permit the Exchange to recover the costs associated with the installation and maintenance of the conduit and cables.

PSE member organizations which use the cables and conduit installed by the Exchange will continue to realize significant costs savings over the cost of external telephone lines and equipment which they would otherwise have to obtain to connect their San Francisco equities and options trading floor facilities. The Exchange does not anticipate that the use of the cables by its members will present a capacity problem now or in the future, as it does not expect that more cable than is currently in place will be needed. If necessary, however, the number of cables in the existing conduit could be increased and a second conduit could be installed.

The proposed charges are consistent with section 6(b)(4) of the Securities Exchange Act of 1934 ("Act"), in that they provide for the equitable allocation of reasonable fees and charges among members which use facilities provided by the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not have an impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 because it establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Publication of the submission is expected to be made in the **Federal Register** during the week of February 3, 1986. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the PSE. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3335 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22873; File No. PHILADEP-86-2]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Provision of Penalties for Failure by Participants To Conform Promptly the Accuracy of Monthly Account Statements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986, the Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) Philadelphia Depository Trust Company (PHILADEP) proposes *a new Rule 29* to provide penalties for failure by participants to respond in timely manner to confirmation requests as to the accuracy of monthly account statements. The text of the rule is attached as Exhibit 1.

(b) PHILADEP does not expect that the proposed rule change will have any direct effect or significant indirect effect on the application of any of its other rules.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) The purpose of the proposed rule change is to emphasize to members or participants the importance of verifying or taking exception, on a timely basis, to the monthly statements issued by PHILADEP for the various types of accounts carried for them. The clearance and settlement of securities transactions and the maintenance of the numerous accounts in connection therewith is a complex activity involving many persons and entities. Promptness in confirming accounts and identifying errors will increase efficiency, reduce the time and effort required for adjustments, and lessen risk. Fairness calls for all participants to follow the same standards. Empowering the Corporation to impose reasonable penalties related to occasional or multiple delinquencies is a legitimate enforcement aid.

(b) The proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. It also provides, in accordance with section 17A(b)(3)(H), a fair procedure with respect to the disciplining of participants.

B. Self-Regulatory Organizations Statement on Burden on Competition

PHILADEP does not perceive any burdens on competition as a result of the proposed rule change. It promotes sound business procedures and is not unduly burdensome.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

Exhibit 1

Rule 29 (new) re response by participants to account statements.

(a) Philadelphia Depository Trust Company (PHILADEP) will render to participants a daily bookkeeping form. This statement must be verified upon receipt and any exceptions or corrections thereto promptly reported to PHILADEP.

(b) As of the last Friday of each month except December, which will be as of the last business day, PHILADEP will request each participant to respond in writing as to whether monthly account statements issued by PHILADEP and received by the participant are accurate for each type of account. If a statement is incorrect, any differences should be reported on research requests to be enclosed with the written reply. The reply must be signed by the participant and returned to PHILADEP by the 20th day of the month following the date of the statement.

(c) The following penalties shall be imposed upon a participant who fails to respond to confirmation requests in a timely manner, as required by section (b) of this rule:

(1) First offense within a twelve-month period: warning;

(2) Second offense within a twelve-month period: $100 fine;

(3) Third offense within a twelve-month period: $250 fine;

(4) Fourth offense within a twelve-month period: the delinquent participant, upon due notice, shall be required to appear before the Board of Directors for the imposition of such further sanctions as the Board may deem appropriate. Such sanctions may include fine, suspension of depository privileges or termination of depository privileges. A written report of the reasons for any such action shall be made promptly and filed with the corporations' records. The participant shall be sent a copy thereof.

(d) Notwithstanding the foregoing, the corporation or the Board of Directors may entend the times fixed for compliance with this rule whenever, in the judgment of either, such extension is necessary or desirable.

[FR Doc. 86-3336 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22878; File No. ODD-86-1]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Granting Approval To Supplement to Option Disclosure Document

On February 4, 1986, the Options Clearing Corporation ("OCC") and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("SEC")[1] copies of a supplement to the options disclosure document pursuant to Rule 9b-1 ("Rule") under the Securities Exchange Act of 1934 ("Act").[2] The supplement, entitled "ECU Disclosure Rider," is intended to disclose potential risks to holders and writers of options on the European Currency Unit ("ECU") in the event that a court were to set aside the SEC's February 3, 1986 orders approving the rules of Phlx and OCC pertaining to ECU options.[3]

The Commodity Futures Trading Commission ("CFTC") and the Chicago Mercantile Exchange ("CME") submitted comments on the Phlx and OCC ECU options proposals contending that ECU options were not "securities" within the SEC's jurisdiction but rather were commodity options with the exclusive jurisdiction of the CFTC.[4] The SEC carefully considered these comments and concluded that the ECU options proposed by the Phlx are within the SEC's jurisdiction and are otherwise consistent with the Act.[5]

The supplement to the options disclosure document recites this history, and indicates that counsel to OCC and Phlx believe that, while the SEC order should be "conclusive," the issue of the SEC's jurisdiction is not free from doubt in the absence of a court decision. The supplement then discusses the possible effects of a court setting aside the SEC's approval of Phlx's proposal to trade ECU options, including the possible cessation of trading in ECU options, or a prohibition on transactions in new series of options or on all opening transactions. The supplement indicates that if all trading is halted, holders and writers of outstanding ECU options "might find it difficult or impossible to close out or otherwise liquidate their open positions," and that there may be additional risks, including an inability to excercise these options, if a court were to set aside the SEC's approval.

As discussed in the Phlx Release, the SEC believes that ECU options are securities within the SEC's jurisdiction. Because the SEC has received comments suggesting otherwise, however, the SEC believes it is appropriate for OCC and Phlx to disclose the potential risks to holders and writers of ECU options in the event the question is litigated and a court sets aside the SEC's orders. The SEC finds that the disclosures in the supplement are adequate to allow prospective ECU options holders and writers to assess the risks of transacting in ECU options at this time.[6]

Rule 9b-1(b)(2)(i) provides that copies of amendments to an options disclosure document must be filed with the SEC at least 30 days prior to the date definitive copies are furnished to investors unless the SEC determines otherwise, having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the SEC either to accelerate or extend the time period definitive copies of a supplement to a disclosure statement may be distributed to the public. The OCC and Phlx have requested a waiver of the 30-day period in order to allow delivery of the supplement to prospective buyers and writers of ECU options before February 12, 1986, the date that Phlx plans to commence trading ECU options.[7] The supplement will be required to be delivered for the 60-day period following publication of the Commission's orders in the **Federal Register** but not thereafter.[8] The SEC finds that it is consistent with the protection of investors and the public interest to allow the distribution of the "ECU Disclosure Rider" as of the date of this order.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3337 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22874; File No. SCCP 86-1]

Self-Regulatory Organizations; Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating to Provision of Penalties for Failure by Participants To Conform Promptly the Accuracy of Monthly Account Statements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986, the Stock Clearing Corporation of Philadephia Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

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[1] Letter from William H. Navin, Schiff Hardin & Waite, Counsel to OCC, to Brandon C. Becker, Assistant Director, Division of Market Regulation, dated February 4, 1986 ("Navin Letter").

[2] 17 CFR 240.9b-1 (1985).

[3] Securities Exchange Act Release Nos. 22853 ("Phlx Release") and 22854 (February 3, 1986).

[4] The CFTC's and CME's comment letters were summarized in the Phlx Release, note 3, *supra*, at 8-11.

[5] Phlx Release, note 3, *supra*, at 13-27.

[6] In this regard, the Commission notes that in conversations with the Commission's staff, counsel for OCC indicated that various drafting changes to the supplement would be made before the supplement is issued. The Commission believes that the supplement, as so amended, adequately describes the risks of transacting in ECU options.

[7] Counsel for OCC represents that it understands "from Phlx that its members will be required to deliver the supplement to prospective buyers and writers of ECU options before executing any orders in such options for their accounts." Navin Letter, *note* 1, *supra*, at 1.

[8] *See* section 25(a)(1) of the Act.

[9] Prior to February 12, 1986, the anticipated day for commencement of trading ECU options, Post-Effective Amendment No. 2 to OCC's Form 20 registration statement, which includes a revised legal opinion reflecting the commencement of offering of ECU options, will become effective. *See* File No. 2-96384.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) Stock Clearing Corporation of Philadelphia (SCCP) proposes as a rule change an amendment to its Rule 21 to provide penalties for failure by participants to respond in timely manner to confirmation requests as to the accuracy of monthly account statements. The text of the rule is attached as Exhibit 1.

(b) SCCP does not expect that the proposed rule change will have any direct effect or significant indirect effect on the application of any of its other rules.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis, for the Proposed Rule Change

(a) The purpose of the proposed rule change is to emphasize to members or participants the importance of verifying or taking exception, on a timely basis, to the monthly statements issued by SCCP for the various types of accounts carried for them. The clearance and settlement of securities transactions and the maintenance of the numerous accounts in connection therewith is a complex activity involving many persons and entities. Promptness in confirming accounts and identifying errors will increase efficiency, reduce the time and effort required for adjustments, and lessen risk. Fairness calls for all participants to follow the same standards. Empowering the Corporation to impose reasonable penalties related to occasional or multiple delinquencies is a legitimate enforcement aid.

(b) The proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. It also provides, in accordance with section 17(b)(3)(H), a fair procedure with respect to the disciplining of participants.

B. Self-Regulatory Organizations Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change. It promotes sound business procedures and is not unduly burdensome.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

February 7, 1986.

Exhibit 1

Rule 21 re response by participants to account statements, as proposed to be amended. Brackets indicate deletions, italics indicate new material.

(a) Stock Clearing Corporation *(SCCP)* will render to clearing members a daily bookkeeping form. This statement must be verified upon receipt and any exceptions or corrections thereto promptly reported to SCCP.

(b) As of the last Friday of each month except December, which will be as of the last business day [Stock Clearing Corporation will issue to clearing members a month-end exception letter indicating whether the statement received on that day is] *SCCP will request each member to respond in writing as to whether monthly account statements issued by SCCP and received by the member are* accurate for each type of account [(CNS or margin)]. If a statement is incorrect, any differences should be reported on research requests to be enclosed with the [exception letter. The verification letter] *written reply. The reply* must be signed by the member and returned to [Stock Clearing Corporation] *SCCP* by the [15th] *20th* day of the month following the date of the statement.

(c) The following penalties shall be imposed upon a clearing member who fails to respond to confirmation requests in a timely manner, as required by section (b) of this rule:

(1) First offense within a twelve-month period: warning;

(2) Second offense within a twelve-month period: $100 fine;

(3) Third offense within a twelve-month period: $250 fine;

(4) Fourth offense within a twelve-month period: the delinquent member, upon due notice, shall be required to appear before the Board of Directors for the imposition of such further sanctions as the Board may deem appropriate. Such sanctions may include fine, suspension from clearing privileges or termination of clearing privileges. A written report of the reasons for any such action shall be made promptly and filed with the corporation's records. The clearing member shall be sent a copy thereof.

(d) Notwithstanding the foregoing, the corporation or the Board of Directors may extend the time fixed for compliance with this rule whenever, in

the judgment of either, such extension is necessary or desirable.

[FR Doc. 86-3338 Filed 2-13-86; 8:45 am]
BILLING CODE 8010-01-M

[File No. 22-14694]

Application & Opportunity for Hearing; Chrysler Financial Corporation

February 11, 1986.

Notice is hereby given that Chrysler Financial Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under a 1983 indenture, a January 1984 indenture, a June 1984 indenture and a June 1985 indenture which were qualified under the Act, and the trusteeship of MHTC, as successor trustee, under an indenture, dated as March 15, 1984 (the "March 1984 indenture"), previously qualified under the Act with Morgan Guaranty Trust Company of New York as trustee (the "retired trustee"), are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under one of such indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likey to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On November 22, 1984, the Applicant filed a Registration Statement (Registration No. 2-88008), covering $300,000,000 principal amount of 13¼ Notes Due 1988 (the "13¼% Notes").

2. the 13¼ Notes were issued pursuant to an Indenture, dated as of December 15, 1983, between MHTC, as Trustee, and the Applicant (the "1983 Indenture").

3. On January 18, 1984, the Applicant filed a Registration Statement (Registration No. 2-88931), covering $300,000,000 principal amount of Medium Term Notes of varying interest rates and dates of maturity (the "Medium Term Notes").

4. The Medium-Term Notes were issued pursuant to an Indenture, dated as of January 15, 1983, between MHTC, as Indenture Trustee, and the Applicant (the "January 1984 Indenture").

5. On January 25, 1984 the Applicant filed an application pursuant to section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture and the January 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures. Said application was granted on October 17, 1984.

6. On June 21, 1984, the Applicant filed a Registration Statement (Registration No. 2-91792), covering $1,500,000,000 principal amount of Senior Debt Securities of varying interest rates and dates of maturity (the "1984 Senior Debt Securities").

7. On June 24, 1984, the Applicant filed an application pursuant to section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures. Said application was granted on October 17, 1984.

8. The 1984 Senior Debt Securities were issued pursuant to an Indenture, dated as of June 15, 1984, as supplemented by the First Supplemental Indenture, dated as of July 15, 1984, between MHTC, as Indenture Trustee, and the applicant (the Indenture, the First Supplemental Indenture and the Second Supplemental Indenture hereinafter collectively referred to as the "June 1984 Indenture").

9. On May 29, 1985, the Applicant filed a Registration Statement (Registration No. 2-98039), covering $1,500,000,000 principal amount of Senior Debt Securities of varying interest rates and dates of maturity (the "1985 Senior Debt Securities").

10. The 1985 Senior Debt Securities were issued pursuant to an Indenture, dated as of June 1, 1985, between MHTC, as Indenture Trustee, and the Applicant (the "June 1985 Indenture").

11. The Applicant is not in default in any respect under the 1983 Indenture, the January 1984 Indenture, the June 1984 Indenture, the June 1985 Indenture or under any other existing Indenture.

12. On March 8, 1984, the Applicant filed a Registration Statement (Registration No. 2-989721), covering $200,000,000 principal amount of 13½% Notes Due 1991 (the "13½% Notes").

13. The 13½% Notes were issued pursuant to an Indenture, dated as of March 15, 1984, between Morgan Guaranty Trust Company of New York ("Morgan"), as Indenture Trustee, and the Applicant (the "March 1984 Indenture").

14. Morgan, pursuant to an Agreement dated as of September 9, 1985, among the Applicant, Morgan, as Retiring Trustee, and MHTC, as Sucessor Trustee, resigned as Indenture Trustee and the Applicant appointed MHTC, by resolution of the Board of Directors, as Indenture Trustee under the March 1984 Indenture.

15. The securities issued pursuant to the 1983 Indenture, the Janaury 1984 Indenture, the March 1984 Indenture, the June 1984 Indenture and the June 1985 Indenture are or will be wholly unsecured and of equal rank, when issued. Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the 1983 Indenture, the January 1984 Indenture, the March 1984 Indenture, the June 1984 Indenture, the June 1985 Indenture are not so likely to involve material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives (a) notice of hearing, (b) hearing and (c) any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14694, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street NW., Washington, DC.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after March 12, 1986, unless prior thereto

a hearing upon the application is ordered by the Commission.

Any interested person may, not later than March 11, 1986 at 5:30 p.m., Eastern Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or request a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3339 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0286]

Gill Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1986)) for transfer of ownership and control of Gill Capital Corporation (Gill), 615 Soledad, San Antonio, Texas 78205, a Federal License under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Gill, which was licensed October 22, 1984, is subject to prior written approval of SBA. Gill is a subsidiary of Gill Financial Corporation (Financial) of the same address.

The transfer of control arises because of the acquisition of 100 percent of the outstanding common stock of Gill by Sunwestern Holding Company (SHC), Three Forest Plaza, 12221 Merit Drive, Dallas, Texas 75251.

Gill is owned and managed by the following:

Name, Position, and Percent of Ownership
William R. Cain, President and director, 0
Morris Wosnig, executive vice president, director, 0
Thad Dorsey, secretary, treasurer, 0
Gary Imig, assistant Secretary, assistant treasurer, 0
Christopher Gill, director, 0
Peter Gill, director, 0
Edward Mattson, director, 0
Gill Financial Corp., 100

If approved the new ownership and management will be as follows:

Dan M. Krausse, 6305 Alpha Rd. Dallas, TX 75240, chairman, chief executive officer, 0
Thomas W. Wright, 6019 Twin Coves, Dallas, TX 75248, president, treasurer, 0
James F. Leary, 7225 South Janmar Circle, Dallas, TX 75230, executive vice president, 0
William R. Cain, 13315 Vista Arroya, San Antonio, TX 78216, executive vice president, 0
Tom H. Delimitros, 6813 Golf Drive, Dallas, TX 78205, senior vice president, 0
Craig A. Meier, 2183 Carmel Drive, Carrollton, TX 75006, secretary, controller, 0
Sunwestern Holding Co., Three Forest Plaza, Ste. 1680, 12221 Merit Drive, Dallas, TX 75251, 100
Sunwestern Investment Fund II, Three Forest Plaza, Ste. 1680, 12221 Merit Drive, Dallas, TX 75251, 78 [1]
Sunwestern Investment Co., Ltd., Three Forest Plaza, Ste. 1680, 12221 Merit Drive, Dallas, TX 75251 22[1]
State of Michigan, Employees' Retirement System, 10
National Gypsum Company, Employees' Retirement Trust 10
G.T. Management, Ltd., London, England 10

As a part of the transfer of control, the name of the Licensee will be changed to Sunwestern Ventures Company.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under this management, including profitability and financial soundness in accordance with the Small Business Investment Act and the Regulations.

Notice is hereby given than any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Dallas, Texas and San Antonio, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 10, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-3307 Filed 2-13-86; 8:45 am]

BILLING CODE 8025-01-M

[1] Indirect ownership through of Sunwestern Holding Company. The entities deemed to own as much as 10% of Gill through ownership of the aboves entities are.

[Application No. 02/02-5494]

Zaitech Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing small business investment companies (13 CFR 107.102 (1985)) under the name of Zaitech Capital Corporation (the Applicant), 229 Powder Mill Road, Morris Plains, New Jersey 07950 for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed officers directors and stockholders of the Applicant are as follows:

Name, Address, and Title or Relationship
Fu-Tong Hsu, 229 Powder Mill Rd., Morris Plains, NJ 07950, president, director and 9 percent shareholder.
Yeh Bin Wu, 16 Ground Pine Rd., Morris Plains, NJ 07950, treasurer, director and 71 percent shareholder
Wen Hong Chen, 96 Mohawk Ave., Norwood, NJ 07648, secretary, director and 20 percent shareholder.

The Applicant will begin operations with a capitalization of $1,000,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, revelant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Piscataway County area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 4, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-3308 Filed 2-13-86; 8:45 am]

BILLING CODE 8025-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Turner Parliamentary Exchange Program: The Office of Private Sector Programs plans to support a two week parliamentary exchange program for relatively younger parliamentarians representing Australia, New Zealand, and Canada in addition to Members of the U.S. Congress. The program will focus on the evolution and development of democracy, social and economic opportunity on the American frontier. The project is scheduled to take place in late spring 1986 in the U.S. midwest and west (from Chicago west) and in Western Canada. Institutions choosing to compete for this program must demonstrate both logistical and administrative capability as well as programmatic competence.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA.

Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming, and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Programs), United States Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Dated: February 11, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-3076 Filed 2-13-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 31
Friday, February 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 18, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–3269 Filed 2–12–86; 10:23 am]
BILLING CODE 6351-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, February 24, 1986, 2:00 p.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations
Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: February 12, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

Issued: February 12, 1986.

[FR Doc. 86–3420 Filed 2–12–86; 8:45 am]
BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:42 p.m. on Friday, February 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Johnson County Bank, Tecumseh, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, February 7, 1986; (2) accept the bid for the transaction submitted by State Bank of Elk Creek, Elk Creek, Nebraska, an insured State nonmember bank; (3) approve the application of State Bank of Elk Creek, Elk Creek, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Johnson County Bank, Tecumseh, Nebraska, and for consent to establish the sole office of Johnson County Bank as a branch of State Bank of Elk Creek; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:44 p.m., and at 4:53 p.m. on Saturday, February 8, 1986, the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted: (1) A resolution (a) making funds available for the payment of insured deposits in Valencia Bank, Placentia, California, which had been closed by the Superintendent of Banks for the State of California on Friday, February 7, 1986, (b) accepting the bid of Barclays Bank of California, San Francisco, California, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (c) designating Barclays Bank of California, San Francisco, California, as the agenct for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the application of Barclays Bank of California, San Francisco, California, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Valencia Bank, Placentia, California.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 11, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86–3382 Filed 2–12–86; 8:45 am]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 10, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by

Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:
Columbia Pacific Bank & Trust Company, Portland, Oregon

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 11, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-3382 Filed 2-12-86; 8:45 am]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, February 19, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, February 20, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1986-1
Robert B. Brauer, Office of Representative Ronald V. Dellums
Draft AO 1986-2
R. Verl Hansen, Gary Robbins for Congress Campaign
Draft AO 1986-3
Julie A. Mackay, Ezzard U.S. Senate Committee, Inc.
Routine Administrative Matters

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-3398 Filed 2-12-86; 1.02 pm]

BILLING CODE 6715-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3357 Filed 2-12-86; 9:19 am]

BILLING CODE 6210-01-M

7

FOREIGN CLAIMS SETTLEMENT COMMISSION

Meeting Notice No. 3-86 (Announcement in Regard to Commission Meetings and Hearings)

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, February 25, 1986 at 10:30 a.m.

SUBJECT MATTER: Consideration of Final Decisions issued on objections under the Vietnam Claims Program (Pub. L. 96-606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC on February 12, 1986

Judith H. Lock,

Administrative Officer.

[FR Doc. 86-3396 Filed 2-12-86; 12:47 pm]

BILLING CODE 4410-01-M

8

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, February 19, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Outlook.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Request from Valley Federal Credit Union, Auburn, Washington to convert from Associational to Community Field of Membership.

RECESS: 10:00 a.m.

TIME AND DATE: 10:15 a.m., Wednesday, February 19, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Authority for Federal Credit Unions to Purchase Loans of an Insured Credit Union in Accordance with section 205(h) of the Federal Credit Union Act. Closed pursuant to exemption (9)(A)(ii).
3. Administrative Actions Under section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
4. Administrative Actions Under section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Corporate Federal Credit Unions. Closed pursuant to exemptions (8) and (9)(B).
6. Board Briefings. Closed pursuant to exemptions (2), (5), (6), and (8).
7. Agency's FY 86 Budget. Closed pursuant to exemptions (2) and (9)(B).

8. Action Under section 205(d) of the Federal Credit Union Act. Closed pursuant to exemptions (6) and (8).

9. Personnel Actions. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT:
Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–3397 Filed 2–12–86; 12:48 pm]

BILLING CODE 7535-01-M

9

POSTAL SERVICE BOARD OF GOVERNORS

By telephone vote on February 7 and 10, 1986, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for March 3, 1986, in Washington, DC. The meeting will involve consideration of the Postal Rate Commission's recommended decision in *Complaint of ADVO-SYSTEM, Inc.*, (Docket No. C85–1).

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McConnell, McKean, Peters, Ryan, Setrakian and Voss; Postmaster General Casey; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(3) and (10) of Title 5 and section 410(c)(4) of Title 39, United States Code, and § 7.3(c) and (j) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 86–3409 Filed 2–12–86; 2:48 pm]

BILLING CODE 7710-12-M

federal register

Friday
February 14, 1986

Part II

Office of Management and Budget

Technical Committee on Industrial Classification's Recommendations for the 1987 Revision of the Standard Industrial Classification

OFFICE OF MANAGEMENT AND BUDGET

Technical Committee on Industrial Classification's Recommendations for the 1987 Revision of the Standard Industrial Classification

AGENCY: Office of Management and Budget.

ACTION: Notice of solicitation of comments on the Technical Committee on Industrial Classification's recommendations for the 1987 revision of the Standard Industrial Classification.

SUMMARY: The Office of Management and Budget is soliciting public comment on the recommendations of the Technical Committee on Industrial Classification for revision of the 1972 Standard Industrial Classification Manual and the 1977 Supplement. The due date for receipt of comments is April 15, 1986. The revision is scheduled to become effective January 1, 1987.

Background: The Standard Industrial Classification (SIC) is a major statistical classification system used to promote the comparability of establishment data describing various facets of the U.S. economy. The SIC's basic classification unit is the establishment, i.e., an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed, such as a farm, mine, factory, store, or hotel. The SIC covers the entire field of economic activities by defining industries in accordance with the composition and structure of the economy. It is revised periodically to reflect the economy's changing industrial composition and organization. The 1972 SIC Manual, as supplemented in 1977, contains the current classification of industries.[1]

On February 22, 1984, the Office of Management and Budget (OMB) published a **Federal Register** notice of intent to revise the Standard Industrial Classification for 1987, containing the "Principles and Procedures for the Review of the SIC."[2] In response, businesses; trade associations; individuals; and Federal, State, and local government agencies submitted proposals for over 1100 individual changes.

To provide technical advice for the 1987 SIC revision and to make recommendations on the individual proposals, OMB established a multiagency Technical Committee on Industrial Classification (TCIC). The TCIC is chaired by OMB and is composed of senior economists, statisticians, and classification specialists representing 18 of the Federal agencies that use the SIC. The TCIC evaluated each of the submitted changes and recommends approximately 40 percent for acceptance and inclusion in a revised SIC. The proposed industry changes included in this announcement are the TCIC's recommendations.

In evaluating each proposed change, the TCIC followed the guidelines presented in the published "Principles and Procedures." These guidelines specify how the proposed change should relate to: the structure of the classification; historical continuity of data; economic significance criteria; specialization and coverage ratios; compatibility with international industry and product classification systems; classification stability; the ability of statistical agencies to classify, collect, and publish industry data; disclosure of individual firm data; the cost and reporting burden to respondents; and the cost to the government.

The primary reasons why the TCIC accepted proposals to establish new industries are: (1) Proposed industries meet the minimum criteria for economic significance, (2) proposed industries meet required specialization and coverage ratios, (3) proposed industries present no significant difficulties or costs in collecting the information needed to make a correct classification of establishments, and (4) improvement in statistical information is large relative to the costs of the proposed change. Similarly, the TCIC generally recommended accepting proposals to combine an existing industry with a compatible category if the existing industry no longer meets the economic significance, specialization, or coverage criteria.

Scope of Revision: The TCIC believes that the recommended changes to the SIC shown in this announcement represent a reasonable balance between the benefits and costs that must be considered in determining the appropriate scope of a revision. The benefits of a revision are the improvements in statistical data that result from a closer alignment of the classification system with the existing structure of the economy. The principal costs of a revision are the costs of implementing a revised SIC and the disruptions to users from breaks in the continuity of some data series. In attempting to achieve an overall balance between benefits and costs, the TCIC considered the benefits and costs of each recommended change.

Decision Process: Taking into consideration benefits and costs, comments submitted in response to this notice, and other factors, including the operating budgets of the Federal agencies that must implement the revised SIC, OMB will make the final determination of the scope and substance of the 1987 revision. Thus the scope of the revision may be substantially reduced or even expanded from that implied by the TCIC recommendations listed below. Therefore, public comments are invited on the following questions: Does the scope of the recommended revision appear to provide a reasonable balance between benefits and costs? If the costs of implementing the recommended revision are greater than available Federal funds, should the scope of the revision be reduced or should its implementation be extended over a longer period? Despite costs considerations, should more extensive revisions be considered because their benefits are substantial?

Implementation: The revision is scheduled to become effective January 1, 1987. In some programs, data based on the new SIC will be available beginning in 1988. However, for most programs, such data will be introduced over several years. Data series for these programs may not always be revised for years prior to the programs' implementation of the new SIC.

Highlights of Proposed Changes: The TCIC proposes a net increase of one from the current 1005 four-digit industries. This represents the deletion of 78 current industries by merger into other industries and the addition of 79 new industries by subdividing or restructuring existing industries. There is a net increase of 18 industries for Services (Division I), 9 for Manufacturing, and 8 for Wholesale, with a net decrease of 34 for the other SIC Divisions. Various industries are also changed by transfers of individual activities, primarily to increase data classification accuracy, consistency, and usefulness, or by renumbering to change the existing three-digit structure.

Most of the industries recommended for deletion no longer meet the economic significance criteria for continued recognition as separate industries. However, a few are dropped because the number of companies represented by the establishments classified in the

[1] The *Standard Industrial Classification Manual 1972* and the *1977 Supplement* are available from the Government Printing Office. Stock numbers and prices are 041-001-00066-6, $15.00, and 003-005-00176-0, $2.75, respectively.

[2] For your information the "Principles and Procedures for the Review of the SIC" are reprinted at the end of this notice.

industry is now so small as to cause disclosure problems in publishing data or because the distinctions required cause difficulties in classfication.

In addition to other proposals submitted, the TCIC made a comprehensive review of Transportation (Major Groups 40–47), Communication (Major Group 48), and Finance (Major Groups 60–62, and 67) to identify revisions needed due to changes in technology and government regulation. Basic revisions are recommended for the structure and detail of banking and other credit agencies (Major Groups 60–61), in particular to recognize changes in depository regulations. In addition, the TCIC recommends the recognition of new industries for Cable and Other Pay Television (from 4833 and 4899) and Radiotelephone Communication Services (from 4811).

The growth of computer-related activities has resulted in a number of new industries. Several new industries are recognized for computers and computer peripheral equipment in Manufacturing (from 3573). A separate industry is recognized for Prepackaged Computer Software in Manufacturing (from 7372). The TCIC recommends that industries for the sale of Computers and Computer Peripheral Equipment and Software be established in Wholesale Trade (from 5081) and Retail Trade (from 5732). Computer establishments will be classified in Wholesale Trade if they sell primarily for business or government use and in Retail Trade if they sell primarily for household use. Additional detail is also recommended for computer services within current Group 737.

The TCIC recommendations place considerable emphasis on improved detail for Services (Division I). Industry 7392, Management, Consulting, and Public Relations, is subdivided into four new industries, and 8911, Engineering, Architectural, and Surveying Services, is subdivided into three. A number of changes are recommended for Major Group 80, Health Services, to improve detail and data accuracy for this area of rapid growth. The TCIC proposes a new Major Group 87 for selected professional and technical services, comprising elements of the current Business Services (Major Group 73) and Miscellaneous Services (Major Group 89). Other important changes are the recognition of industries for Physical Fitness Facilities (from 7299, 7997, and 7999), Video Tape Rentals (from 7394), and Tax Return Preparation Services (from 7299). Various other industries are also subdivided (e.g., 7321, 7393, and 7539).

The TCIC recommends subdivisions of some of the largest and fastest growing current industries in Manufacturing, including Miscellaneous Plastics Products (3079), Radio and Television Communication Equipment (3662), and Electronic Components, NEC (3679). Recognition of a distinct operating technology is extended to fluid power (from 3494, 3561, 3566, 3569 and 3728) and of a different fabrication technology to the distinction between die casting and other casting (from 336). Existing problems in data collection and accuracy are corrected by grouping together all relays (from 3613, 3622 and 3679) and all packaging equipment (from 3551 and 3569) and by moving or combining instruments and instrumentation systems currently covered by 3662, 3811, 3829, and 3832.

Notable changes in other SIC Divisions include the recognition of Animal Aquaculture (from 0279) and of Record and Prerecorded Tape Stores (from 5733). Establishments selling used automobile parts at wholesale or retail are placed together in a new industry in Wholesale Trade, because of difficulties in determining whether individual units sell primarily to households or to businesses.

Description of the List of Changes: The attached list of recommended changes shows only industries for which the TCIC is recommending substantive changes in content, detail, or structure. However, updating and clarification of industry titles and descriptions will be made in many other industries and numerous new example items will be added to the indexes to reflect new acitivities.

The current 1972/77 industries for which the TCIC is recommending changes are listed in the left-hand column with the corresponding 1987 recommendations directly opposite in the right-hand column. Where two or more current industries are combined into one, a brace indicates which industries are to be combined.

Recommendations in which new industries are created or an existing industry changed are indicated by: (1) Specifying each changed 1972/77 industry code and title in the left-hand column, (2) listing short descriptions of the activities involved in any multiple changes to an industry beneath the industry title, and (3) listing in the right-hand column the corresponding 1987 industry code and title for each listed change. A 1987 industry having a code without an asterisk includes only those activities now covered by the industry code in the left-hand column. A 1987 industry having a code preceded by an asterisk includes the corresponding activities described in the left-hand column plus activities from one or more other 1972/77 industries; the other activities are included in the 1972/77 industries specified in the parenthetical note. For example, current Industry 2065 is changed by moving certain nut processing to new Industry 2068 (which also includes activities from current Industries 2034 and 2099) and establishing a new Industry 2064 (which includes only the remaining activities from current Industry 2065).

Note that only industry (four-digit) changes are listed. Changes at the two-digit and three-digit levels are only implied. For instance, Major Groups 11 and 66 would be deleted since all their industries will be moved. Industry group 739 will be deleted and industry group 738 will be added because of the four-digit industry changes.

Please note that the abbreviation "nec" used in the attached list stands for Not Elsewhere Classified.

Comment Procedure: Comments on the revisions must be in writing. When you want to comment on interrelated changes, your comments should deal with all the interrelated implications. Comments will be accepted only on: (1) Making the listed industry changes or retaining the current classifications (1972 Manual as supplemented in 1977), (2) making changes that were submitted previously but are not recommended by the TCIC (alternatives to such proposed changes such as fewer industries or a narrower scope for change will also be considered), and (3) the issues of benefits and costs of implementation described above.

Address: Please send two copies of your comments to Paul Bugg, Office of Management and Budget, 3001 New Executive Office Building, Washington, DC 20503.

Due Date: To assure consideration, all comments must be received on or before April 15, 1986.

Availability of Comment Materials: All written comments and materials received in response to this notice will be available for public inspection throughout 1986 during normal business hours, 9:00 am to 5:30 pm, in Room 3001, New Executive Office Building, 17th Street and Pennsylvania Avenue NW., Washington, DC 20503. Individuals wishing to inspect these materials must call (202) 395–3093 to obtain an appointment to enter the building.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Management and Budget, telephone number (202) 395–3093.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

BILLING CODE 3110-01-M

TCIC Recommendations for the 1987 SIC Revision
Summary of Changes in 1972/77 Sequence

1972/77		1987	
0181	Ornamental nursery products	* 0181	Ornamental nursery products (See 0189)
0182	Food crops grown under cover	* 0182	Food crops grown under cover (See 0189)
0189	Horticultural specialties, nec		
	Ornamental nursery products	* 0181	Ornamental nursery products (See 0181)
	Food crops grown under cover	* 0182	Food crops grown under cover (See 0182)
0279	Animal specialties, nec		
	Animal aquaculture	0273	Animal aquaculture
	Other	0279	Animal specialties, nec
0721	Crop planting and protection	* 0721	Crop planting and protection (See 0729)
0722	Crop harvesting	* 0722	Crop harvesting (See 0729)
0723	Crop preparation services for market	* 0723	Crop preparation services for market (See 0729)
0724	Cotton ginning	* 0724	Cotton ginning (See 0729)

* part 1

1972/77		1987	
0729	General crop services		
	Crop planting and protection	* 0721	Crop planting and protection (See 0721)
	Crop harvesting	* 0722	Crop harvesting (See 0722)
	Crop preparation services for market	* 0723	Crop preparation services for market (See 0723)
	Cotton ginning	* 0724	Cotton ginning (See 0724)
0821	Forest nurseries and seed gathering	0831	Forest products ex. timber
0843	Extraction of pine gum		
0849	Gathering of forest products, nec		
1051	Bauxite and other aluminum ores	1099	Metal ores, nec
1092	Mercury ores		
1099	Metal ores, nec		
1111	Anthracite	1231	Anthracite mining
1112	Anthracite mining services	1241	Coal mining services
1213	Bituminous & lignite mining services		
1211	Bituminous coal and lignite		
	Bituminous coal mining, underground	1222	Bituminous coal mining, underground
	Other	1221	Bituminous and lignite coal mining, surface, and bituminous coal preparation plants

* part 2

1972/77		1987	
1452	Bentonite		
1453	Fire clay	1459	Clay and related minerals, nec
1454	Fuller's earth		
1459	Clay and related minerals, nec		
1472	Barite		
1473	Fluorspar		
1476	Rock salt	1479	Chemical and fertilizer mining, nec
1477	Sulfur		
1479	Chemical and fertilizer mining, nec		
1492	Gypsum		
1496	Talc, soapstone, and pyrophyllite	1499	Nonmetallic minerals, nec
1499	Nonmetallic minerals, nec		
1611	Highway and street construction		
	Recreational facilities; trailer camps	* 1629	Heavy construction, nec (See 1629)
	Culverts and curbs	* 1771	Concrete work (See 1771)
	Other	1611	Highway and street construction

* part

1972/77		1987	
1629	Heavy construction, nec		
	Land clearing and earthmoving	* 1794	Excavating and foundation work (See 1794)
	Pile driving	* 1799	Special trade contractors, nec (See 1799)
	Other	* 1629	Heavy construction, nec (See 1611)
1771	Concrete work	* 1771	Concrete work (See 1611)
1794	Excavating and foundation work	* 1794	Excavating and foundation work (See 1629)
1799	Special trade contractors, nec	* 1799	Special trade contractors, nec (See 1629)
2016	Poultry dressing plants	* 2015	Poultry dressing and processing (See 2017)
2017	Poultry and egg processing		
	Poultry processing	* 2015	Poultry dressing and processing (See 2016)
	Egg processing	2018	Egg processing
2032	Canned specialties		
	Fish cakes	* 2091	Canned and cured seafoods (See 2091)
	Other	2032	Canned specialties
2034	Dehydrated fruits, vegetables, soups		
	Nuts	* 2068	Salted and roasted nuts and seeds (See 2055, 2099)
	Other	2034	Dehydrated fruits, vegetables, soups

* part

1972/77		1987	
2038	Frozen specialties		
	Bakery products	2031	Frozen bakery products
	Other	2036	Frozen specialties, except frozen bakery products
2047	Dog, cat, and other pet food		
	Dog and cat food	2047	Dog and cat food
	Other pet food and meat not fit for human consumption	* 2048	Prepared feeds, nec (See 2048)
2048	Prepared feeds, nec	* 2048	Prepared feeds, nec (See 2047)
2065	Confectionery products		
	Salted and roasted nuts	* 2068	Salted and roasted nuts and seeds (See 2034, 2099)
	Other	2064	Confectionery products
2066	Chocolate and cocoa products	* 2066	Chocolate and cocoa products (See 2099)
2091	Canned and cured seafoods	* 2091	Canned and cured seafoods (See 2032)
2099	Food preparations, nec		
	Chocolate	* 2066	Chocolate and cocoa products (See 2066)
	Potato chips and similar products	2096	Potato chips and similar products
	Salted and roasted seeds	* 2068	Salted and roasted nuts and seeds (See 2034, 2065)
	Other	2099	Food preparations, nec

* part 5

1972/77		1987	
2271	Woven carpets and rugs		
2272	Tufted carpets and rugs	2273	Floor covering mills
2279	Carpets and rugs, nec		
2281	Yarn mills	* 2281	Yarn mills (See 2283)
2282	Throwing and winding mills	* 2282	Throwing and winding mills (See 2283)
2283	Wool yarn mills		
	Thread	* 2284	Thread mills (See 2284)
	Yarn, made in spinning mills	* 2281	Yarn mills (See 2281)
	Yarn, made in throwing and winding mills	* 2282	Throwing and winding mills (See 2282)
2284	Thread mills	* 2284	Thread mills (See 2283)
2291	Felt goods, except woven felts and hats		
2292	Lace goods		
2293	Paddings and upholstery filling	2299	Textile goods, nec
2294	Processed textile waste		
2299	Textile goods, nec		

* part 6

1972/77		1987	
2321	Men's and boys' shirts and nightwear		
	Shirts	2321	Men's and boys' shirts
	Nightwear	* 2322	Men's and boys' underwear and nightwear (See 2322)
2322	Men's and boys' underwear	* 2322	Men's and boys' underwear and nightwear (See 2321)
2328	Men's and boys' work clothing		
	Jeans and jean-cut casual slacks	2325	Men's and boys' jean-cut casual slacks
	Other	2326	Men's and boys' work clothing
2351	Millinery	2353	Hats, caps, and millinery
2352	Hats and caps, exc. millinery		
2363	Children's coats and suits	2369	Children's outerwear, nec
2369	Children's outerwear, nec		
2411	Logging camps and contractors	* 2411	Logging (See 2421)
2421	Sawmills and planing mills		
	Logging	* 2411	Logging (See 2411)
	Other	2421	Sawmills and planing mills
2431	Millwork	* 2431	Millwork (See 3442)
2492	Particleboard	* 2493	Reconstituted wood products (See 2499, 2661)

1972/77		1987	
2499	Wood products, nec		
	Reconstituted wood products (e.g., medium density fiberboard, waferboard, oriented strandboard, hardboard)	* 2493	Reconstituted wood products (See 2492, 2661)
	Other	2499	Wood products, nec
2522	Metal office furniture	* 2522	Office furniture, except wood (See 2599)
2542	Metal partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2599)
2599	Furniture and fixtures, nec		
	Office furniture	* 2522	Office furniture, except wood (See 2522)
	Partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2542)
	Other	2599	Furniture and fixtures, nec
2611	Pulp mills	* 2611	Pulp mills (See 2621, 2631)
2621	Paper mills, except building paper		
	Pulp mills	* 2611	Pulp mills (See 2611, 2631)
	Other	* 2621	Paper mills (See 2661)
2631	Paperboard mills		
	Pulp mills	* 2611	Pulp mills (See 2611, 2621)
	Other	* 2631	Paperboard mills (See 2661)

1972/77		1987	
2641	Paper coating and glazing		
	Paper coating and laminating for packaging	2671	Paper coating and laminating for packaging
	Other	2672	Paper coating and laminating, except for packaging
2642	Envelopes	2677	Envelopes
2643	Bags, except textile bags		
	Bags: uncoated paper and multiwall	2674	Bags: uncoated paper and multiwall
	Other	2673	Bags: plastics, laminated and coated
2645	Die-cut paper and paperboard	2675	Die-cut paper and paperboard
2646	Pressed and molded pulp goods	* 2679	Converted paper products, nec (See 2649)
2647	Sanitary paper products	2676	Sanitary paper products
2648	Stationery products	2678	Stationery products
2649	Converted paper products, nec	* 2679	Converted paper products, nec (See 2646)
2651	Folding paperboard boxes	* 2657	Folding paperboard boxes (See 2654)
2654	Sanitary food containers		
	Folding	* 2657	Folding paperboard boxes (See 2651)
	Other	2656	Sanitary food containers

* part

1972/77		1987	
2661	Building paper and board mills		
	Insulation board	* 2493	Reconstituted wood products (See 2492, 2499)
	Paper	* 2621	Paper mills (See 2621)
	Paperboard	* 2631	Paperboard mills (See 2631)
2753	Engraving and plate printing		
	Platemaking	* 2796	Platemaking (See 2754, 2793, 2794, 2795).
	Printing	2755	Printing from engraved plates
2754	Commercial printing, gravure		
	Platemaking	* 2796	Platemaking (See 2753, 2793, 2794, 2795)
	Other	2754	Commercial printing, gravure
2793	Photoengraving		
2794	Electrotyping and stereotyping	* 2796	Platemaking (See 2753, 2754)
2795	Lithographic platemaking services		
2819	Industrial inorganic chemicals, nec	* 2819	Industrial inorganic chemicals, nec (See 2869)
2831	Biological products		
	Diagnostic substances	2835	Diagnostic substances
	Other	2836	Biological products, except diagnostic substances

* part

1972/77		1987	
2869	Industrial organic products, nec		
	Hydrazine	* 2819	Industrial inorganic chemicals, nec (See 2819)
	Other	2869	Industrial organic products, nec
3031	Reclaimed rubber	* 3069	Fabricated rubber products, nec (See 3069, 3555)
3069	Fabricated rubber products, nec	* 3069	Fabricated rubber products, nec (See 3031, 3555)
3079	Miscellaneous plastics products		
	Unsupported sheet and film	3071	Unsupported sheet and film
	Laminated plate and sheet	3072	Laminated plate and sheet
	Pipe	3073	Pipe
	Bottles	3074	Bottles
	Unsupported profile shapes	3075	Unsupported profile shapes
	Foam products	3076	Foam products
	Custom compounding of resins	3077	Custom compounding of resins
	Plumbing fixtures	3078	Plumbing fixtures
	Plumbing fixture fittings: plastics	* 3432	Plumbing fixture fittings (See 3432)
	Other	3079	Plastics products, nec
3264	Porcelain electrical supplies	* 3264	Porcelain electrical and electronic supplies (See 3679)

* part

1972/77		1987	
3332	Primary lead	3339	Primary nonferrous metals, nec
3333	Primary zinc		
3339	Primary nonferrous metals, nec		
3361	Aluminum foundries		
	Die castings	3363	Aluminum die castings
	Other	3365	Aluminum foundries
3362	Brass, bronze and copper foundries		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3369)
	Other	3366	Copper foundries
3369	Nonferrous foundries, nec		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3362)
	Other	3369	Nonferrous foundries, except aluminum and copper
3423	Hand and edge tools, nec	* 3423	Hand and edge tools, nec (See 3555)
3432	Plumbing fixture fittings and trim (brass goods)	* 3432	Plumbing fixture fittings (See 3079)

* part

1972/77		1987	
3433	Heating equipment, except electric		
	Incinerators, metal: domestic and commercial	* 3567	Industrial furnaces and ovens (See 3567)
	Other	3433	Heating equipment except electric
3442	Metal doors, sash, and trim		
	Doors, windows, etc. of wood covered with metal	* 2431	Millwork (See 2431)
	Other	3442	Metal doors, sash, and trim
3444	Sheet metal work		
	Curtain wall	* 3449	Miscellaneous metal work (See 3449, 3469)
	Other	3444	Sheet metal work
3449	Miscellaneous metal work	* 3449	Miscellaneous metal work (See 3444, 3469)
3469	Metal stampings, nec		
	Curtain wall	* 3449	Miscellaneous metal work (See 3444, 3449)
	Other	3469	Metal stampings, nec
3494	Valves and pipe fittings		
	Hydraulic and pneumatic valves and hose fittings and assemblies	* 3492	Fluid power valves and hose fittings (See 3728)
	Industrial valves	3491	Industrial valves
	Plumbing and heating valves; fittings, flanges, and unions	3494	Valves and pipe fittings, nec

1972/77		1987	
3531	Construction machinery	* 3531	Construction machinery (See 3536)
3536	Hoists, cranes and monorails		
	Aerial work platforms; automobile wrecker hoists	* 3531	Construction machinery (See 3531)
	Automatic stacking machines	* 3537	Industrial trucks and tractors (See 3537)
	Other	3536	Hoists, cranes and monorails
3537	Industrial trucks and tractors	* 3537	Industrial trucks and tractors (See 3536)
3549	Metalworking machinery, nec		
	Welding and soldering machines, nonelectric	* 3548	Welding apparatus (See 3623)
	Automotive maintenance equipment	* 3559	Special industry machinery, nec (See 3559, 3636)
	Other	3549	Metalworking machinery, nec
3551	Food products machinery		
	Packaging machinery	* 3565	Packaging machinery (See 3569)
	Other	3556	Food products machinery

1972/77		1987	
3555	Printing trades machinery		
	Printers' rolls, blankets and roller covers	* 3069	Fabricated rubber products, nec (See 3031, 3069)
	Printers mallets	* 3423	Hand and edge tools, nec (See 3423)
	Other	3555	Printing trades machinery
3559	Special industry machinery, nec	* 3559	Special industry machinery, nec (See 3549, 3636)
3561	Pumps and pumping equipment		
	Fluid power equipment	* 3562	Fluid power pumps and motors (See 3566, 3569, 3728)
	Other	3561	Pumps and pumping equipment, except fluid power pumps
3562	Ball and roller bearings	3594	Ball and roller bearings
3565	Industrial patterns	3595	Industrial patterns
3566	Speed changers, drives and gears		
	Hydrostatic drives (transmissions)	* 3562	Fluid power pumps and motors (See 3561, 3569, 3728)
	Other	3566	Speed changers, drives and gears
3567	Industrial furnaces and ovens	* 3567	Industrial furnaces and ovens (See 3433)

1972/77		1987	
3569	General industrial machinery, nec		
	Fluid power equipment	* 3562	Fluid power pumps and motors (See 3561, 3566, 3728)
	Packaging machinery	* 3565	Packaging machinery (See 3551)
	Other	3569	General industrial machinery, nec
3572	Typewriters	* 3579	Office machines, nec (See 3579)
3573	Electronic computing equipment		
	Computers	3571	Computers
	Computer storage devices	3572	Computer storage devices
	Terminals	* 3575	Computer terminals (See 3661)
	Magnetic disks	* 3695	Recording media (See 3679)
	Other	3577	Computer peripheral equipment, nec
3574	Calculating and accounting machines	3578	Calculating and accounting machines
3576	Scales and balances, except laboratory	3596	Scales and balances, except laboratory
3579	Office machines, nec	* 3579	Office machines, nec (See 3572)
3585	Refrigeration and heating equipment	* 3585	Refrigeration and heating equipment (See 3699)

1972/77		1987	
3599	Machinery, except electrical, nec		
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3728)
	Other	3599	Machinery, except electrical, nec
3613	Switchgear and switchboard apparatus		
	Relays	* 3625	Relays and industrial controls (See 3622, 3679)
	Other	3613	Switchgear and switchboard apparatus
3622	Industrial controls	* 3625	Relays and industrial controls (See 3613, 3679)
3623	Welding apparatus, electric	* 3548	Welding apparatus (See 3549)
3636	Sewing machines		
	Household	* 3639	Household appliances, nec (See 3639)
	Commercial and industrial	* 3559	Special industry machinery, nec (See 3549, 3559)
3639	Household appliances, nec	* 3639	Household appliances, nec (See 3636)
3641	Electric lamps	* 3641	Electric lamps (See 3699)

* part

1972/77		1987	
3661	Telephone and telegraph apparatus		
	Teletypewriters	* 3575	Computer terminals (See 3573)
	Other	* 3661	Telephone and telegraph apparatus (See 3662)
3662	Radio and television communication equipment		
	Modems and other interface equipment	* 3661	Telephone and telegraph apparatus (See 3661)
	Radio and TV communication systems and equipment, and broadcast and studio equipment	3663	Radio and TV communication systems and equipment, and broadcast and studio equipment
	Search, detection, navigation and guidance systems and equipment	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3811)
	Other communications equipment	3669	Other communications equipment, nec
	Hydrological, hydrographic, meteorological, and geophysical equipment	* 3829	Measuring and controlling devices, nec (See 3811, 3829, 3832)
	Other	* 3699	Electrical equipment and supplies, nec (See 3699)
3671	Electron tubes, receiving type	* 3671	Electron tubes (See 3679)
3672	Cathode ray television picture tubes		
3673	Electron tubes, transmitting		

* part

1972/77		1987	
3679	Electronic components, nec		
	Ferrite electronic parts and porcelain electronic supplies	* 3264	Porcelain electrical and electronic supplies (See 3264)
	Relays	* 3625	Relays and industrial controls (See 3613, 3622)
	Electron tube parts	* 3671	Electron tubes (See 3671, 3672, 3673)
	Printed circuit boards	3672	Printed circuit boards
	Recording media	* 3695	Recording media (See 3573)
	Other	3679	Electronic components, nec
3693	X-ray apparatus and tubes		
	Electromedical and electrotherapeutic apparatus	3845	Electromedical and electrotherapeutic apparatus
	Other	3844	X-ray apparatus and tubes
3699	Electrical equipment & supplies, nec		
	Electric lamp bulb parts	* 3641	Electric lamps (See 3641)
	Electric comfort heating equipment	* 3585	Refrigeration and heating equipment (See 3585)
	Other	* 3699	Electrical equipment and supplies, nec (See 3662)

1972/77		1987	
3728	Aircraft equipment, nec		
	Hydraulic and pneumatic valves	* 3492	Fluid power valves and hose fittings (See 3494)
	Fluid power pumps and motors	* 3562	Fluid power pumps and motors (See 3561, 3566, 3569)
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3599)
	Other	3728	Aircraft equipment, nec
3811	Engineering & scientific instruments		
	Search, detection, navigation, and guidance instruments	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3662)
	Laboratory apparatus and furniture	3821	Laboratory apparatus and furniture
	Surveying and drafting apparatus	* 3829	Measuring and controlling devices, nec (See 3662, 3829, 3832)
	Analytical instruments	* 3826	Analytical instruments (See 3832)
3829	Measuring & controlling devices, nec	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3832)
3832	Optical instruments and lenses		
	Analytical instruments	* 3826	Analytical instruments (See 3811)
	Meteorological, hydrographic, hydrological, and geophysical instruments	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3829)
	Optical instruments	3827	Optical instruments

1972/77		1987	
3962	Artificial flowers	3999	Manufacturing industries, nec
3999	Manufacturing industries, nec		
3963	Buttons	3965	Needles, pins, buttons, and clothing fasteners
3964	Needles, pins, and fasteners		
4141	Local passenger charter service	4143	Transportation charter service
4142	Charter service, except local		
4171	Bus terminal services	4173	Bus terminal and service facilities
4172	Bus service facilities		
4224	Household goods warehousing	4226	Special warehousing and storage, nec
4226	Special warehousing and storage, nec		
4421	Noncontiguous area transportation	4424	Deep sea domestic transportation
4422	Coastwise transportation		
4423	Intercoastal transportation		
4453	Lighterage	4459	Local water transportation, nec
4459	Local water transportation, nec		
4464	Canal operation	* 4469	Water transportation services, nec (See 4469)

1972/77		1987	
4469	Water transportation services, nec		
	Marinas	4468	Marinas
	Oil spill cleanup	* 4959	Sanitary services, nec (See 4959)
	Other	* 4469	Water transportation services, nec (See 4464)
4511	Certificated air transportation	* 4512	Air transportation-scheduled (See 4521)
4521	Noncertificated air transportation		
	Air transportation-scheduled	* 4512	Air transportation-scheduled (See 4511)
	Other	4522	Air transportation-non-scheduled
4582	Airports and flying fields	* 4581	Services related to air transportation (See 9621)
4583	Airport terminal services		
4712	Freight forwarding	4731	Freight forwarding and arrangement
4723	Freight transportation arrangement		
4722	Passenger transportation arrangement		
	Travel agencies	4724	Travel agencies
	Tour operators	4725	Tour operators
	Other	4729	Arrangement of passenger transportation, nec

1972/77		1987	
4742	Railroad car rental with service	4741	Railroad car rental
4743	Railroad car rental without service		
4782	Inspection and weighing services	4785	Inspection services, fixed facilities, nec
4784	Fixed facilities for vehicles, nec		
4811	Telephone communication		
	Radiotelephone communication services	4812	Radiotelephone communication services
	Other	4813	Telephone communications, except radio telephone
4821	Telegraph communication	* 4822	Telegraph and other message communications (See 4899)
4833	Television broadcasting		
	Subscription television	* 4841	Cable and other pay TV (See 4899)
	Other	4833	Television stations
4899	Communication services, nec		
	Cable television	* 4841	Cable and other pay TV (See 4833)
	Message communications	* 4822	Telegraph and other message communications (See 4821)
	Other	4899	Communication services, nec

* part

1972/77		1987	
4959	Sanitary services, nec	* 4959	Sanitary services, nec (See 4469)
5013	Automotive parts and supplies		
	New automotive parts and automotive equipment	5013	Motor vehicle parts and supplies, new
	Used automotive parts	* 5015	Motor vehicle parts, used (See 5931)
5039	Construction materials, nec		
	Brick, stone, and related products	5032	Brick, stone, and related products
	Roofing, siding, and insulation	5033	Roofing, siding, and insulation
	Other	5039	Construction materials, nec
5041	Sporting and recreational goods	5091	Sporting and recreational goods
5042	Toys and hobby goods and supplies	5092	Toys and hobby goods and supplies
5063	Electrical apparatus and equipment		
	Communication equipment	* 5065	Electronic parts and equipment (See 5065)
	Measuring and testing equipment	* 5084	Industrial machinery and equipment (See 5084)
	Other	5063	Electrical apparatus and equipment
5065	Electronic parts and equipment	* 5065	Electronic parts and equipment (See 5063)

* part

1972/77		1987	
5081	Commercial machines and equipment		
	Computers and computer peripheral equipment and software	5045	Computers and computer peripheral equipment and software
	Office equipment	5044	Office equipment
	Other	5046	Commercial equipment, nec
5084	Industrial machinery and equipment	* 5084	Industrial machinery and equipment (See 5063)
5086	Professional equipment and supplies		
	Medical and hospital equipment	5047	Medical and hospital equipment
	Ophthalmic goods	5048	Ophthalmic goods
	Other	5049	Professional equipment, nec
5133	Piece goods	5131	Piece goods and notions
5134	Notions and other dry goods		
5152	Cotton	5159	Farm-product raw materials, nec
5159	Farm-product raw materials, nec		
5161	Chemicals and allied products		
	Plastics materials and basic shapes	5162	Plastics materials and basic shapes
	Other	5169	Chemicals and allied products, nec

1972/77		1987	
5199	Nondurable goods, nec		
	Books, periodicals, and newspapers	5192	Books, periodicals, and newspapers
	Flowers and florists' supplies	5193	Flowers and florists' supplies
	Other	5199	Nondurable goods, nec
5311	Department stores		
	Having fewer than 50 employees	* 5399	Misc. general merchandise stores (See 5399)
	Other	5311	Department stores
5399	Misc. general merchandise stores	* 5399	Misc. general merchandise stores (See 5311)
5422	Freezer and locker meat provisioners	5421	Meat and fish (seafood) markets
5423	Meat and fish (seafood) markets		
5462	Retail bakeries--baking and selling	5461	Retail bakeries
5463	Retail bakeries--selling only		
5561	Recreation and utility trailer dealers		
	Utility trailers	* 5599	Automotive dealers, nec (See 5599)
	Other	5561	Recreational vehicle dealers
5599	Automotive dealers, nec	* 5599	Automotive dealers, nec (See 5561)

1972/77		1987	
5631	Women's accessory and specialty stores	5632	Women's accessory and specialty stores
5681	Furriers and fur shops		
5732	Radio and television stores		
	Computer and software stores	5734	Computer and software stores
	Radio, television, and electronics stores	5731	Radio, television, and electronics stores
5733	Music stores		
	Record and prerecorded tape stores	5735	Record and prerecorded tape stores
	Musical instrument stores	5736	Musical instrument stores
5931	Used merchandise stores		
	Automotive parts, used	* 5015	Motor vehicle parts, used (See 5013)
	Other	5932	Used merchandise stores
5982	Fuel and ice dealers, nec		
	Ice	* 5999	Miscellaneous retail stores, nec (See 5999)
	Other	5989	Fuel dealers, nec
5999	Miscellaneous retail stores, nec	* 5999	Miscellaneous retail stores, nec (See 5982)

* part

1972/77		1987	
6022	State banks, Federal Reserve		
	Stock savings banks	* 6031	State mutual or stock savings banks, federally insured (See 6023)
	Commercial banks	* 6022	State commercial banks, federally insured (See 6023)
6023	State banks, not Federal Reserve, FDIC		
	Stock savings banks	* 6031	State mutual or stock savings banks, federally insured (See 6022)
	Commercial banks	* 6022	State commercial banks, federally insured (See 6022)
6024	State banks, not Federal Reserve, not FDIC		
	Stock savings banks	* 6037	State mutual or stock savings banks, not federally insured (See 6034)
	Commercial banks	6024	State commercial banks, not federally insured
6025	National banks, Federal Reserve		
6026	National banks, not Federal Reserve, FDIC	6021	National banks
6027	National banks, not FDIC		
6028	Private banks, not incorp., not FDIC	6029	Commercial banks, nec

* part

1972/77		1987	
6032	State mutual savings banks, Federal Reserve	* 6031	State mutual or stock savings banks, federally insured (See 6033)
1/	Federal savings banks, FDIC	6035	Federal mutual or stock savings banks, FDIC
1/	Federal savings banks, FSLIC	6036	Federal mutual or stock savings banks, FSLIC
6033	State mutual savings banks, not Federal Reserve, FDIC	* 6031	State mutual or stock savings banks, federally insured (See 6032)
6034	State mutual savings banks, not FDIC	* 6037	State mutual or stock savings banks, not federally insured (See 6024)
6042	Nondeposit trust, Federal Reserve	6091	Nondeposit trust facilities
6044	Nondeposit trust, not FDIC		
6052	Foreign exchange establishments		
	Branches and agencies of foreign banks	6081	Branches and agencies of foreign banks
	Other	* 6099	Functions related to banking, nec (See 6054, 6055, 6056, 6059)
6054	Safe deposit companies	* 6099	Functions related to banking, nec (See 6052, 6055, 6056, 6059)
6055	Clearinghouse associations	* 6099	Functions related to banking, nec (See 6052, 6054, 6056, 6059)

1/ Federal savings banks did not exist prior to 1982.

1972/77		1987	
6056	Corporations for banking abroad		
	Foreign trade and international banking institutions	6082	Foreign trade and international banking institutions
	Other	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6059)
6059	Functions closely related to deposit banking, nec	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6056)
6112	Rediscounting, not for agricultural		
	Federal and federally sponsored credit agencies	* 6111	Federal and federally sponsored credit agencies (See 6113, 6131, 6159)
	Central reserve depository institutions	6019	Central reserve depository institutions, nec
6113	Rediscounting for agricultural	* 6111	Federal and federally sponsored credit agencies (See 6112, 6131, 6159)
6122	Federal savings and loans	6071	Federal savings and loans
6123	State savings and loan associations, insured	6072	State savings and loans, federally insured
6124	State savings and loan associations, noninsured, FHLB	6073	State savings and loans, not federally insured
6125	State savings and loan associations, noninsured, nec		

1972/77		1987	
6131	Agricultural credit institutions		
	Federal and federally sponsored	* 6111	Federal and federally sponsored credit agencies (See 6112, 6113, 6159)
	Other (i.e., private)	* 6159	Miscellaneous business credit institutions (See 6159, 6611)
6142	Federal credit unions	6061	Federal credit unions
6143	State credit unions	6062	State credit unions
6144	Nondeposit industrial loan companies		
6145	Licensed small loan lenders		
6146	Installment sales finance companies	* 6141	Personal credit institutions (See 6611)
6149	Miscellaneous personal credit institutions		
6159	Miscellaneous business credit institutions		
	Federal and federally sponsored	* 6111	Federal and federally sponsored credit agencies (See 6112, 6113, 6131)
	Other	* 6159	Miscellaneous business credit institutions (See 6131, 6611)

1972/77		1987	
6281	Securities and commodity services		
	Investment advice and research	6282	Investment advice and research
	Other	6289	Services allied with the exchange of securities or commodities
6411	Insurance agents, brokers, and service	* 6411	Insurance agents, brokers, and service (See 6611)
6531	Real estate agents and managers	* 6531	Real estate agents and managers (See 6611)
6611	Combinations of real estate, insurance, loans, law offices		
	Loans, personal	* 6141	Personal credit institutions (See 6144, 6145, 6146, 6149)
	Loans, business	* 6159	Miscellaneous business credit institutions (See 6131,6159)
	Insurance	* 6411	Insurance agents, brokers and service (See 6411)
	Real estate	* 6531	Real estate agents and managers (See 6531)
	Law offices	* 8111	Legal services (See 8111)

1972/77		1987	
6722	Management investment offices, open-end	6721	Management investment offices
6723	Management investment offices, closed-end		
6724	Unit investment trusts	6726	Unit investment trust and face-amount certificate offices
6725	Face-amount certificate offices		
6793	Commodity traders	6799	Investors, nec
6799	Investors, nec		
7214	Diaper services	* 7219	Laundry and garment services, nec (See 7219, 7299)
7219	Laundry & garment services, nec	* 7219	Laundry and garment services, nec (See 7214, 7299)
7299	Miscellaneous personal services		
	Tax return preparation services	7291	Tax return preparation services
	Invalid supplies rental	* 7384	Equipment rental and leasing, nec (See 7394)
	Health clubs and spas	* 7991	Physical fitness facilities (See 7997, 7999)
	Seamstress and dressmaking services, except custom	* 7219	Laundry and garment services, nec (See 7214, 7219)
	Other	7299	Miscellaneous personal services

* part

1972/77		1987	
7321	Credit reporting and collection		
	Adjustment and collection services	7322	Adjustment and collection services
	Other	7323	Credit reporting
7332	Blue printing and photocopying services	* 7334	Photocopying and duplicating services (See 7339)
7333	Commercial photography, art, and graphics		
	Commercial photography	7335	Commercial photography
	Other	7336	Commercial art and graphic design
7339	Stenographic and reproduction services, nec		
	Stenographic and court reporting services	7338	Stenographic and court reporting services
	Duplicating services	* 7334	Photocopying and duplicating services (See 7332)
7341	Window cleaning	7349	Building maintenance services, nec
7349	Building maintenance services, nec		
7362	Temporary help supply services	* 7363	Personnel supply services, nec (See 7369)
7369	Personnel supply services, nec		
	Facilities support management services	8744	Facilities support management services
	Other	* 7363	Personnel supply services, nec (See 7362)

* part

1972/77		1987	
7372	Computer programming and other software services		
	Prepackaged computer software	3653	Prepackaged computer software
	Computer integrated system design	7373	Computer integrated system design
	Custom computer programming services	7371	Custom computer programming services
7374	Data processing services		
	Electronic information retrieval services	7375	Electronic information retrieval services
	Computer facilities management services	7376	Computer facilities management services
	Other	7374	Computer processing and data preparation services
7379	Computer related services, nec		
	Computer rental and leasing	7377	Computer rental and leasing
	Computer maintenance and repair	7378	Computer maintenance and repair
	Other	7379	Computer related service, nec
7391	Research and development laboratories	8731	Commercial physical and biological research

1972/77		1987	
7392	Management, consulting, and public relations		
	Management services	8741	Management services
	Management consulting services	8742	Management consulting services
	Public relations services	8743	Public relations services
	Commercial economic, sociological, and educational research	8733	Commercial economic, sociological, and educational research
	Other consulting services	* 8999	Services, nec (See 8999)
7393	Detective and protective services		
	Detective, guard, and armored car services	7381	Detective, guard, and armored car services
	Security systems services	7382	Security systems services
7394	Equipment rental and leasing		
	Heavy construction and earthmoving equipment rental and leasing	7383	Heavy construction and earthmoving equipment rental and leasing
	Video tape rentals	7841	Video tape rentals
	Other	* 7384	Equipment rental and leasing, nec (See 7299)
7396	Trading stamp services	* 7389	Business services, nec (See 7399)
7397	Commercial testing laboratories	8735	Testing laboratories
7399	Business services, nec	* 7389	Business services, nec (See 7396)

* part

1972/77		1987	
7523	Parking lots	7521	Automobile parking
7525	Parking structures		
7531	Top and body repair shop	7532	Top, body, and upholstery repair and paint shop
7535	Paint shops		
7539	Automotive repair shops, nec		
	Motor vehicle exhaust systems repair shops	7533	Motor vehicle exhaust systems repair shops
	Motor vehicle glass replacement shops	7536	Motor vehicle glass replacement shops
	Motor vehicle transmission repair shops	7537	Motor vehicle transmission repair shops
	Other	7539	Automotive repair shops, nec
7813	Motion picture production, except for television	7812	Motion picture production
7814	Motion picture production for television		
7823	Motion picture film exchanges	7822	Motion picture and tape distribution
7824	Film or tape distribution services		
7932	Billiard and pool establishments	* 7999	Amusement and recreation services, nec (See 7999)

1972/77		1987	
7997	Membership sports and recreation clubs		
	Physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7999)
	Other	7997	Membership sports and recreation clubs
7999	Amusement and recreation services, nec		
	Museums (commercial)	* 8412	Museums and art galleries (See 8411)
	Botanical and zoological gardens (commercial)	* 8422	Botanical and zoological gardens (See 8421)
	Nonmembership physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7997)
	Other	* 7999	Amusement and recreation services, nec (See 7932)
8011	Offices of physicians	* 8011	Offices and clinics of physicians (See 8081)
8021	Offices of dentists	* 8021	Offices and clinics of dentists (See 8081)
8049	Offices of health practitioners, nec		
	Offices of podiatrists	8043	Offices of podiatrists
	Other	8049	Offices of health practitioners, nec

1972/77		1987	
8059	Nursing and personal care facilities, nec		
	Intermediate care facilities for the mentally retarded	8052	Intermediate care facilities for the mentally retarded
	Intermediate care facilities except for the mentally retarded	8053	Intermediate care facilities except for the mentally retarded
	Other	8059	Nursing and personal care facilities, nec
8081	Outpatient care facilities		
	Clinics of physicians	* 8011	Offices and clinics of physicians (See 8011)
	Clinics of dentists	* 8021	Offices and clinics of dentists (See 8021)
	Kidney dialysis centers	8092	Kidney dialysis centers
	Specialty outpatient clinics	8093	Specialty outpatient clinics, nec
8091	Health and allied services, nec		
	Home health care agencies	8082	Home health care agencies
	Other	8099	Health and allied services, nec
8111	Legal services	* 8111	Legal services (See 6611)
8241	Correspondence schools		
	Data processing	* 8243	Data processing schools (See 8243)
	Business and secretarial schools	* 8244	Business and secretarial schools (See 8244)
	Other	* 8249	Vocational schools, nec (See 8249)

1972/77		1987	
8243	Data processing schools	* 8243	Data processing schools (See 8241)
8244	Business and secretarial schools	* 8244	Business and secretarial schools (See 8241)
8249	Vocational schools, nec	* 8249	Vocational schools, nec (See 8241)
8321	Individual and family social services	* 8322	Individual and family social services (See 8399)
8399	Social services, nec		
	Services to individuals and families (e.g., self-help; agencies for retarded, blind, etc.)	* 8322	Individual and family social services (See 8321)
	Other	8399	Social services, nec
8411	Museums and art galleries, noncommercial	* 8412	Museums and art galleries (See 7999)
8421	Botanical and zoological gardens, noncommercial	* 8422	Botanical and zoological gardens (See 7999)
8911	Engineering, architectural, and surveying services		
	Engineering services	8711	Engineering services
	Architectural services	8712	Architectural services
	Surveying services	8713	Surveying services
8922	Noncommercial research organizations		
	Physical and biological research	8732	Noncommercial physical and biological research
	Economic, sociological, and educational research	8734	Noncommercial economic, sociological, and educational research

1972/77		1987	
8931	Accounting, auditing, and bookkeeping services	8721	Accounting, auditing, and bookkeeping services
8999	Services, nec	* 8999	Services, nec (See 7392)
9621	Regulation and administration of transportation programs		
	Control tower operations	* 4581	Services related to air transportation (See 4582)
	Other	9621	Regulation and administration of transportation programs

nec = not elsewhere classified

* part

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Principles and Procedures for the Review of the SIC

A. Introduction

Standard Industrial Classification (SIC) is a system for classifying establishments by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation of statistical data describing the economy. The SIC is used by agencies of the U.S. government that collect or publish data by industry. It is also widely used by state agencies, trade associations, private businesses, and other organizations.

The SIC system is designed for statistical purposes. Although the classification is also used for various administrative purposes, the requirements of government agencies that use it for non-statistical purposes play no role in development and revision of the SIC.

B. Principles of Classification

The following are the basic principles underlying the SIC classification (described more fully in the SIC Manual):

(1) The classification is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure.

(2) The unit classified is the establishment. An establishment is an economic unit that produces goods or services—for example, a farm, mine, factory, or store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. Any establishment is not necessarily identical with a company or enterprise.

(3) Each establishment is classified according to its *primary* activity. Primary activity is determined by identifying the predominant product or group of products produced or handled, or service rendered.

(4) An industry (4-digit SIC) consists of a group of establishments primarily engaged in the same activity. To be recognized as an industry, such a group of establishments must meet certain criteria of economic significance, as described in Section D.

C. Purpose and Scope of Review

The SIC is reviewed and revised periodically to reflect the changing structure of the U.S. economy. Revisions take account of technological change and the economic growth and decline of individual industries. They may include changes in industry detail or coverage, improvements to industry definitions, or the clarification of the classification of individual activities.

Review and revision of the SIC are the responsibility of the Office of Management and Budget, which has developed these principles and procedures with the assistance of the Technical Committee on Industrial Classification. Committee members include the following agencies: Office of Management and Budget (Chair), Board of Governors of the Federal Reserve System, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Bureau of the Census, Department of Transportation, Economic Research Service (USDA), Federal Emergency Management Agency, Federal Trade Commission, Internal Revenue Service, International Trade Administration, Interstate Commerce Commission, National Center for Health Statistics, National Science Foundation, Small Business Administration, Social Security Administration, and U.S. International Trade Commission.

(1) Structure of the Classification. The overall structure is a general-purpose framework which can have its 4-digit detail rearranged for various analytical purposes. Proposed changes should be designed to fit within this structure with minimum disruption to the existing configuration.

For example, a change which consists of breaking one 4-digit industry into two or more within the same 3-digit industry group is easier and less expensive than a change which affects 3-digit groups, particularly if this in turn affects the 2-digit or divisional groupings. Changes to the basic 2- or 3-digit structure require exceptionally strong justification showing that they reflect changes in the economy and not simply a different view of what the basic structure should be.

(2) Historical continuity. Maintaining the continunity of major Federal statistical series will be an important consideration in evaluating proposed changes in the SIC. Changes that would result in weakening principal economic indicators or that would necessitate costly backward revision of time series will require very strong justification on other grounds in order to be acceptable.

(3) Economic Significance. To be recognized as an industry, a group of establishments must have economic significance measured in terms of numbers of establishments, employment, payroll, value added, and volume of business (value of shipments or receipts). The following scoring system is used to evaluate economic significance for SIC purposes.

Values for the "average" industry are calculated by division (manufacturing, construction, retail trade, etc.) for each of the five factors. These values are used in evaluating the economic significance of a proposed SIC industry by composing the industry averages to the values for the proposed industry, as illustrated below. For each factor, a proposed industry is assigned points. The number of points is equal to the value of the factor for a proposed industry as a percentage of the value for the average industry.

The number of employees and value added are considered more significant and reliable measures of industry importance and are therefore given double weight when calculating the final score. The table below presents calculations (based on 1977 data) for a proposed potato chip and similar snack industry in Division D (manufacturing). The final score for this industry is 59 (column E total divided by column D total).

	Proposed industry (A)	Average industry (B)	Number of points (A as percent of B) (C)	Weights (D)	Weighted points (C × D) (E)
Number of establishments	230	796	29	1	29
Number of employees (thousands)	26.7	43.0	62	2	124
Payroll (million dollars)	301.3	564.0	52	1	52
Value added (million dollars)	934.5	1,295.0	72	2	144
Shipments (million dollars)	1,929.0	3,006.0	64	1	64

In general, a score of at least 20 is needed to warrant recognition as a new SIC industry. However, an existing SIC industry will be retained if it has a score of at least 10.

The 1987 review will be based on the most recent data available. In cases where data are not available for all five factors, scores will be weighted averages of those factors for which data are available.

(4) Specialization and Coverage. In order that an industry properly reflect the activity being measured, the output of the establishments in the industry should: (1) Consist mainly of the goods or services defining the industry, and (2) account for the bulk of the specified goods and services provided by all establishments. For manufacturing industries these factors are measured by the primary product specialization ratio and the coverage ratio.

The primary product *specialization ratio* indicates how much the establishments in a given industry concentrate on the activities that define the industry. This ratio is calculated by dividing the value of the primary product shipments of the establishments classified in the industry by the value of all shipments (both primary and secondary) for the same establishments.

The *coverage ratio* indicates the volume of shipments of products which define the industry that are accounted for by establishments classified in the industry. The coverage ratio is the proportion of products defining the industry shipped by establishments classified in the industry to total shipments of these products by all manufacturing establishments.

For example, establishments classified in 1977 as primarily producing transformers (SIC 3612) had shipments of $2051.1 million for transformers, total shipments for all products of $2160.6 million, and a resulting specialization ratio of 95. Total shipments by all industries of transformers were $2117.8 million, yielding a coverage ratio of 97.

A 4-digit SIC industry should have a minimum primary product specialization ratio of 80. The minimum for the coverage ratio is generally 70 for establishments producing for commercial sale. This may be reduced some for industries having significant interplant transfers or production for use within the same establishment (e.g., Gray Iron Foundries, Iron and Steel Forgings) or for industries producing the same final product as another industry but made from materials that are at a more advantaged stage of manufacture (e.g., Blended and Prepared Flour). Where existing industries have relatively few large plants producing a wide range of products, the coverage ratio criterion often precludes the establishment of further industry detail.

(5) *Other Statistical Considerations.* In general, proposed new industries should meet each of the criteria of economic significance, specialization and coverage. However, industries that substantially exceed one or two of the criteria and fall slightly short on the others also may be accepted in some cases.

For example, industries which are not yet large enough, but are growing rapidly may be accepted based on current size and evidence of growth by a specified time. Proposed industries which meet the criteria only marginally should also show substantial current growth and likelihood of future growth.

Special consideration will be given to new industries and industry changes that increase comparability of the SIC with the United Nation's International Standard Industrial Classification and that increase the capability of assessing the impact of international trade on domestic industries such as increasing possibilities for comparability with the Customs Cooperation Council's Harmonized System.

Proposed new industries will be evaluated to make sure they provide for relatively stable classification of individual establishments. In some fields of activity, it is normal for the primary activity, if defined restrictively, to fluctuate from year to year. For example, shipbuilding establishments may work on defense contracts one year and on civilian contracts the next. Or establishments may perform primarily new work one year and rebuilding another. Separate industries will not be created where the distinction would result in industry shifts for establishments that are still engaged in similar industrial activity.

In some cases a proposed industry may meet all previously stated criteria but be rejected because the remaining part of the existing industry is too small for separate industry status and cannot logically be merged into other industries.

(6) *Administrative Considerations.* Cost to the government, as well as cost and burden to businesses that furnish data to the government, will be major considerations in evaluating proposed changes in the SIC. Revisions that involve major changes in record-keeping by business or in government agencies' procedures, records, and data series will require very strong justification to be considered.

The ability of government agencies to classify, collect, and publish data on the proposed basis will also be taken into account. Proposed changes must be such that they can be applied by agencies within their normal processing operations.

Proposed industries must also include a sufficient number of companies that industry data can be published without disclosing information about the operations of individual firms.

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Friday
February 14, 1986

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 35, 905, 965, and 968
Lead-Base Paint Hazard Elimination in Public and Indian Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 35, 905, 965, and 968

[Docket No. R-86-1165; FR-1748]

Lead-Based Paint Hazard Elimination in Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD invites public comment concerning amendment to its regulations regarding the elimination of hazards due to lead-based paint in Public and Indian housing. This proposed rule would amend 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, propose a new subpart H in 24 CFR Part 965, PHA-owned or Leased Projects—Maintenance and Operation, and amend 24 CFR Parts 905, Indian Housing, and 968, Comprehensive Improvement Assistance Program (CIAP).

Changes in the funding priorities for CIAP are also proposed. Revised funding groups are proposed with certain lead-based paint testing and hazard abatement preferences.

DATE: Comment due date April 15, 1986.

ADDRESSES: Comments on rule: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

Comments on information collection: Comments on the information collection requirements contained in this proposed rule should be submitted both to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. They should contain the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director of Policy, Office of Public and Indian Housing, (202) 755-6713, Room 4118, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD is reconsidering its current regulations implementing section 302 of the Lead-Based Paint Poisoning Prevention Act in light of advances in knowledge regarding the causes of elevated blood lead levels of children as well as hazard detection and abatement techniques. HUD is also reexamining its regulations pursuant to the mandate of *Ashton v. Pierce*, 716 F.2d 56 (D.C. Cir. 1983), a case in which public housing tenants in the District of Columbia challenged the adequacy of HUD's lead-based paint regulations. This rulemaking was initiated by publication of an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984), which solicited public comment on issues relating to implementation of lead-based paint detection and hazard abatement procedures in the many distinct HUD programs to which the statute applies.

This proposed rule, which relates primarily to public housing, is being published separately at this time pursuant to a subsequent order of the Federal District Court. The same order requires publication of a final rule not later than August 1, 1986.

Pursuant to a subsequent order of the District Court, HUD will publish, not later than July 1, 1986, proposed rules prescribing lead-based paint hazard detection and abatement requirements applicable to the FHA single-family and multifamily insurance programs and the Section 8 Existing Housing Certificate program. In addressing the issue of what procedures may be "practicable" within these program contexts, HUD must consider factors that are different from those considered in the instant rulemaking because, in each of such programs, the cost of hazard abatement is a private cost. In the single-family insurance programs, for example, the cost of hazard abatement required to qualify an existing property for FHA mortgage insurance on resale of the property must be borne by the seller of the home. In Section 8 Existing Housing, the cost of any hazard abatement required to qualify the rental unit as one in which a low-income tenant's rental payment will be subsidized must be borne by the landlord. The impact of such costs on availability of the programs to their intended participants is a relevant consideration in determining whether requirements are "practicable"; see discussion of *Ashton* decision below.

Additional proposed rules prescribing procedures applicable to rehabilitation assisted under the Community Development Block Grant and other HUD programs will be published not later than August 1, 1986. Any additional program-specific proposed rules, plus any amendments to the general requirements of 24 CFR Part 35, which will remain applicable to programs not covered by a program-specific rule, will be published not later than September 1, 1986.

This preamble is divided into the following six sections: (1) Background (discussion of statutory and regulatory requirements and the *Ashton* decision); (2) ANPR (summary of the comments that focus on public housing); (3) Recent HUD Experience (summary of a recent public housing funding set-aside for lead-based paint testing and abatement); (4) Recent Studies of the Lead-Based Paint Problem (including a public housing study, the Centers for Disease Control's January 1985 Statement on Preventing Lead Poisoning in Young Children, and the Environmental Protection Agency's Air Quality Criteria for Lead); (5) Proposed Requirements for Public and Indian Housing's Proposed Program; and (6) Section-by-Section Review of Proposed Regulations.

A. Statutory and Regulatory Requirements

HUD's authority to issue this rule is based on section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822 ("LPPPA"). Added in 1973, section 302 requires the Secretary of HUD to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The statute further prescribes that such procedures shall "as a minimum provide for . . . appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed"; and, further, that the procedures must apply to housing constructed prior to 1950 and "may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint."

HUD regulations implementing section 302 were promulgated in 1976 and are found at 24 CFR Part 35. The development of the regulation is fully described in the ANPR. The key provisions of Part 35 define an "immediate hazard" requiring treatment

as "paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose." That is, the definition did not require that the lead content in the paint be measured or identified, only that the condition of the paint be defective. Also, the definition excluded intact, or "tight", paint regardless of its lead content. The hazard elimination procedures in Part 35 are applicable to all "HUD-associated housing" regardless of construction date.

B. The Ashton Decision

In *Ashton* v. *Pierce*, public housing tenants in th District of Columbia challenged the adequacy of the Department's lead-based paint regulations. The individual plaintiff lived with her three children in a public housing project from 1975 to 1981. In 1980, on of plaintiff's children was hospitalized for five days for treatment of an elevated lead level which was alleged to have resulted from ingestion of lead-based paint from the interior of the dwelling unit.

The plaintiff alleged that HUD's lead-based paint regulation was deficient for failing to define "tight" lead-based paint surfaces as an "immediate hazard" requiring treatment.

The plaintiff's action was certified as a class action on behalf of "all tenants or residents of HUD-associated public housing in the District of Columbia who are, or who have, young children who have experienced or who may in the future experience lead poisoning as a result of the presence of lead-based paint in their dwelling units."

The District Court determined the issues on motions for summary judgment based on the statutory language and legislative history and the administrative record of the Department's rulemaking. The District Court found that the regulations were deficient in not treating lead based paint accessible to children as a immediate hazard, and in failing to prescribe sufficient steps to eliminate accessible lead-based paint "as far as practicable."

The District Court ordered the Department to "undertake further rulemaking to establish appropriate procedures for the elimination of lead-based paint hazards in federally-associated public housing, including so-called tight paint." *Ashton* v. *Pierce*, 541 F. Supp. 635, 642 (D.D.C. 1982).

The Court of Appeals affirmed the District Court order. *Ashton* v. *Pierce*, 716 F.2d 56 (D.C. Cir. 1983). The Court of Appeals found, first, that Congress intended the phrase "immediate hazard" not to be limited to paint in a defective condition. The Court of Appeals also held that the Department had applied an erroneous standard in determining whether it was "practicable" to eliminate the immediate hazard of intact lead paint. In the Court of Appeals' view, HUD had construed "as far as practicable" to mean "most practicable." The Court expressly rejected what it considered to be a "cost-benefit analysis" approach employed by the Department.

> In plain language Congress commanded that if it is "practicable" to eliminate an immediate hazard, that hazard must be eliminated. The statute admits of no exceptions to the required elimination procedures on the basis of the degree of practicability. Neither Congress' concern about the cost of the elimination program nor congressional silence in the face of the Department's interpretation of the statute can overcome the clear statutory directive. *Id.* at 64.

The Court of Appeals concluded, however, that the administrative record had not established that elimination of chewable intact paint "is in fact practicable. *Id.* Both the Court of Appeals and the District Court made specific reference to a HUD options paper considered by Secretary Carla A. Hills before promulgation of this final rule. The paper listed five alternatives:

Alternative I—require *scraping* of loose, peeling, flaking paint and repainting (1972 regulation).

(Alternative II—require *removal* of all paint from loose, flaking, peeling surfaces.

Alternative III—require *scraping* of loose, peeling, flaking paint and *removal* of all paint from chewable surfaces.

Alternative IV—require *removal* of all paint from both flaking, peeling surfaces and chewable surfaces.

Alternative V—require removal of all paint from all accessible, intact surfaces.

HUD had considered the following factors when evaluating these alternatives: (1) Total costs both to government and private owners, (2) benefits to children (qualitatively assessed), (3) impact on the effectiveness and availability of FHA program activities, and (4) possible redlining of neighborhoods and abandonment of housing. HUD had selected alternative I.

The District Court approved HUD's conclusion that alternatives IV and V were impracticable due to adverse impacts of the major costs involved on continued FHA activity and "unreasonable burden" placed on the FHA fund. But the District Court concluded that the Department had inappropriately used costs to compare the first three alternatives on a cost-effectiveness basis and reject alternatives II and III because it found alternative I alone to be cost-effective.

The Court of Appeals, however, rejected the District Court's conclusion that HUD, by implication, had found options II and III to be practicable. Ambiguity in the administrative record to the 1976 rule, it held, did not support this inference. Moreover, the Court of Appeals did not question the District Court's acceptance of HUD's rejection of alternatives IV and V. The Court of Appeals stated:

> It is peculiarly within the expertise of the Department to determine the practicability of a given elimination procedure. We agree with the district court that the "as far as practicable" standard allows the Department "to consider cost and technical considerations in developing its regulations" and that the threshold of practicability is reached if there exist "reasonably available techniques" for eliminating the hazard . . . *Id.*

The Court of Appeals affirmed the requirement to reopen rulemaking to determine under what conditions intact paint containing lead constituted an immediate hazard. The Court affirmed the Department's broad discretion in making this determination.

> * * * Like the district court, we note that "in carrying out further rulemaking [the Department] retains substantial discretion to adopt regulations of a scope and effect it deems appropriate. * * * We simply hold that the Department's "complete failure to address the hazards associated with "tight" paint containing lead is contrary to the intent of Congress." *Id.*

II. Advance Notice of Proposed Rulemaking and Comments

HUD commenced rulemaking by publishing an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984). The ANPR raised four major regulatory issues: (1) Hazard Determination; (2) Program Coverage; (3) Notification; and (4) Monitoring and Enforcement. Several questions were raised within each of the principal issues. Thirty-nine comments were received from commenters including PHAs, state, county and city health departments, cities, trade associations, public interest organizations, state housing authorities and individuals. Commenters submitted or referred to numerous articles and papers that addressed additional aspects of the problem.

This section will discuss the ANPR questions and comments as they relate to public housing.

1. Health vs. Housing Approach

Eighteen questions were posed regarding the major issue of hazard

determination. The issue which received the most public comment, was "Should HUD adopt elements of a health approach?" A "health approach" would involve: (1) An initial screening of children to determine their blood lead level; (2) the identification and treatment of children found to have an elevated blood lead level; and (3) the deleading of the homes in which such children reside. In contrast, a "housing approach" would involve an inspection of all housing for lead-based paint and the removal of such paint where found, regardless of the age and blood lead level of the inhabitants. Twelve commenters opposed HUD's adoption of only a health approach. Six commenters favored the use of a health approach and four commenters suggested combining health and housing approaches.

Commenters opposing use of the health approach alone generally concluded that the health approach should not be used by HUD because they asserted: (1) It is an "illness approach" which incorrectly assumes that a high risk child can be identified before irreversible damage ensues; (2) screening programs are limited to a few localities; (3) the approach is inconsistent with HUD's statutory responsibility to prevent lead poisoning; and (4) the approach is not cost-effective. Some commenters favored the health approach because, they said, it eliminates the hazards of loose, peeling and cracking lead paint where the danger is the greatest and deals effectively with children on an individual basis and where a clear health problem exists. One commenter thought the health approach was feasible particularly when dealing with low-income governmental housing. Four commenters suggested combining components of both approaches or using a health approach only where lead screening is available.

Based on these comments and the studies mentioned in the ANPR (49 FR 19217) which suggest that other sources also cause lead poisoning (namely food, gasoline, household dust and garden soil, and dust and fumes produced as a result of renovation or demolition of older buildings) and that emissions are the primary cause of lead poisoning, HUD is proposing a housing approach to deal comprehensively with the lead-based paint problem in public and Indian housing family projects. However, lead screening programs in localities which operate them and screening by health professionals and the Indian Health Service will be utilized to establish priorities for testing and abating units housing children with identified elevated blood lead levels.

2. Screening Programs

Several questions within the issue of hazard determination focused on screening programs. A majority of the commenters did not believe screening program coverage was broad enough to justify HUD reliance on their availability. A majority of the commenters also suggested that HUD abatement requirements should be activated by a referral from a screening program. It was asserted that HUD should request assistance from local public health agencies or the state or regional departments of public health on how to offer HUD clients lead poisoning prevention programs. Where lead screening is unavailable, HUD was advised to either establish a pilot screening program or use the housing approach.

Several commenters raised issues of confidentiality or administrative feasibility concerning securing data on individuals for use by HUD or parties undertaking inspection and abatement actions. It was suggested that HUD could require residents to present a health record on each child or information specific to the location of the dwelling and the conditions to be corrected. Another commenter suggested as a procedure to satisfy confidentiality requirements, that parents could sign a waiver at the time the child's blood specimen is obtained giving the health care provider permission to report abnormal screening results to the appropriate PHAs. However, another commenter stated that shifting the responsibilities of screening and informing HUD of results to an already overburdened health care system is not practical or feasible. It was stated that discrimination in housing for families with young children might result if property owners were obligated to assume deleading costs upon identification of a child suffering from blood lead elevation. A systematic housing inspection approach would preclude this possibility, it was said, by application of uniform abatement requirements. Generally, commenters agreed that cooperation between the PHA and health care providers is an absolute prerequisite if inspection for lead-based paint and intervention (including abatement and notification by PHAs and health authorities) is to be effective.

For public and Indian housing, HUD will require PHAs and Indian Housing Authorities (IHAs) (hereinafter PHA includes IHA) to rely upon existing screening programs and health professionals to obtain information regarding children with EBLs and respond by taking emergency action. The Indian Health Service field staff may assist with this effort in Indian areas. See Section V.A. below.

3. Health Standard

HUD invited suggestions on health standards. Many standards were suggested based upon both a child's blood lead level and the level of lead in painted surfaces. EBLs of any degree or, in the alternative, greater than or equal to 25 μg/dl (micrograms of lead per deciliter of whole blood) were suggested. For painted surfaces, it was suggested that readings of 0.5–2.0 mg/cm² (milligrams per square centimeter) should require abatement.

Unlike other agencies such as the Environmental Protection Agency and the Centers for Disease Control (CDC), HUD does not have the scientific or medical expertise to define its own standard; therefore, the Department is predisposed to adopt a standard used by these agencies. For public and Indian housing, HUD proposes to use the CDC definition of EBL and the standards for measurement of lead content in painted surfaces. In *Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control; January 1985* (CDC, 1985), CDC defined an EBL which reflects excessive absorption of lead as a confirmed concentration of lead in whole blood at 25 μg/dl or greater. CDC recommends that readings by X-ray fluorescence analyzers (XRFs) greater than or equal to 0.7 mg/cm² for lead on painted surfaces be considered positive.

4. Hazard Elimination Requirements for Painted Surfaces; Interrelation of Lead Content and Blood Lead Level

The ANPR requested comments as to whether hazard elimination requirements should pertain to: (a) All accessible surfaces; (b) accessible chewable surfaces; or (c) exterior surfaces. Comments were diverse. Seven commenters favored an "all accessible surfaces" requirement. These commenters noted that: (1) Any other alternative would reduce the effectiveness of the hazard elimination and diminish the appearance and condition of subsidized housing; (2) "accessible" should be defined as up to a level of five feet; and (3) all intact surfaces and any exposed (accessible to children) areas as well as interior and exterior surfaces should be included in the definition of "accessible". Six commenters favored an "accessible chewable requirement for interior and

exterior surfaces." Another commenter suggested requiring abatement of "exterior surfaces reachable by children 7 years old". One commenter urged requiring abatement of surfaces which are "accessible or, inaccessible and chewable".

When asked what level of lead content in intact paint, if any, should be considered an immediate hazard, ten commenters suggested .06% to .5% lead by dry weight or 0.5 to 2.0 mg/cm² of surface. Three commenters stated that any level of lead in paint is unsafe and suggested that if lead can be detected by existing technology, it should be eliminated. CDC's comment stated, "Peeling, chipping, deteriorated paint containing lead of any level is an immediate hazard, if it is accessible to a child. The exposure of the child to the paint over time is more significant than the lead level in the paint; moreover, the condition and accessibility of the paint is vastly more important than precise measurement of the amount of lead in the paint." In its January 1985 statement, CDC stated that a lead-based paint hazard exists when (a) the XRF reading is positive and (b) the surfaces being tested are chewable or contain damaged (cracked, chipped, loosened, chewed) paint. CDC has also stated that lead-based paint on intact walls, ceilings, or other surfaces that are not chewable does not constitute an immediate hazard. CDC has recommended that there is no level of lead in wall paint that may be assumed to produce a given blood lead level, and there is no need to place great emphasis on the precise measurement of lead in paint once a positive determination is made. Other commenters also indicated that a precise correlation between lead in paint and lead in blood need not be demonstrated, nor is a precise correlation likely to be found.

On the basis of the state of both detection and abatement technology, HUD proposes that, in public and Indian housing, paint surfaces where lead analysis produces a reading greater than or equal to 0.7 mg/cm² that are in unsound condition or on chewable surfaces be provided hazard abatement treatment. See Section V.B. below.

5. Construction Cut-Off Date

Section 302 of LPPPA provides that its requirements must be applied to housing constructed prior to 1950 and that they may be applied to housing constructed during or after 1950 "if the Secretary determines, in his discretion, that such housing presents hazards of lead-based paint."

The hazard elimination requirements contained in Subpart C of Part 35 apply to all "HUD-associated housing," whenever constructed. On the other hand, the notification requirements contained in Subpart A of Part 35 are limited to purchasers and tenants of housing constructed prior to 1950. The administrative record of the rulemaking does not make clear the basis of the Secretary's determination that prompted extension of the hazard elimination requirements to post-1950 housing, and the record suggests that no determination of the presence or absence of a hazard was made in the context of addressing the notification requirements. In *Ashton,* however, the Court of Appeals confirmed that it was within the Secretary's discretion both whether to make such a determination and whether to apply requirements to housing constructed during or after 1950.

In the ANPR, the Department opened this question by soliciting comment as to whether there was a reasonably satisfactory cut-off date of construction after which units should be presumed, for purposes of mandatory testing and hazard abatement requirements, to be free of lead-based paint.

Commenters suggested various cut-off dates and supporting rationales. A small number supported a 1950 cut-off. Several recommended 1971, when the LPPPA's prohibition on use of lead-based paint in Federally assisted construction or rehabilitation was enacted. Others recommended 1977, when the Consumer Product Safety Commission banned the commercial sale of paint having a lead content by weight of over .06%.

As indicated below, a recent sample survey of public housing units indicates the presence of lead-based paint in some units constructed as late as 1977. However, HUD is cognizant that the use of lead-based paint in Federally-assisted construction and rehabilitation has been prohibited since 1971. Section 401 of LPPPA, as enacted in 1971, directed the Secretary of Health, Education and Welfare to prohibit the use of lead-based paint in such construction or rehabilitation. The Secretary of HEW promulgated regulations in March 1972, and complementing regulations were adopted by the Secretary of HUD in August 1972.

HUD believes it inappropriate to impose extensive testing requirements on an assumption of noncompliance with its regulations. Accordingly, its proposed rule for public and Indian housing mandates testing for family projects constructed prior to 1973. Testing of projects constructed during or after 1973 and prior to 1978 will be required only if there is positive evidence of lead-based paint having a lead content greater than or equal to 0.7 mg/cm² in some units operated by the PHA that were constructed in that period. See Section V.A. below.

6. Detection and Abatement Technologies

Many commenters requested that HUD prescribe particular detection or abatement technologies. Some commenters asserted, however, that PHAs are best able to judge the appropriate detection and abatement approach for a given locality. Other commenters suggested that HUD should prescribe the use of XRFs or standard technologies to eliminate confusion and unnecessary deleading work.

Commenters mentioned new techniques including high pressure water guns, low intensity heat guns, wall systems for covering and liquid paint removers. Many problems are associated with removal methods. With the exception of abatements involving wall coverings, hazardous dusts or fumes are produced.

CDC recommended that "it is better to establish performance standards than design criteria: This does not preclude new approaches in the search for better instrumentation to detect lead in wall coverings. The marketplace can decide the least expensive method of hazard abatement as long as the objective of permanently eliminating the hazard, either through removal or covering the lead paint surface, is met. To prescribe a particular method sometimes stops research into better ways to meet the goals."

For lead abatement for public and Indian housing, HUD is proposing CDC's approach which establishes performance standards rather than design criteria. Establishing performance standards does not preclude the development of new approaches for the removal of lead-based paint.

HUD is not prescribing the method of abatement, but is requiring that the paint either be thoroughly removed or covered. Covering the hazard could include such methods as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removing the hazard could include scraping after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute hazard abatement. See Section V.B. below.

7. Notice of Abatement Hazards

All commenters agreed that there is a need for written, verbal or posted notice of hazards arising from abatement

techniques. HUD proposes to extend the notification requirement to housing constructed at any time prior to 1978, in contrast to its requirements for testing and, consequently, abating hazards in public and Indian housing, because of the likelihood that some units constructed after 1972 may contain lead-based paint and unnecessary complexity of basing a notification requirement on positive identification of lead-based paint in some units constructed after 1972. This complexity would be more severe in the context of the general requirements of Part 35, where it could not be tied practicably to discovery of other units within the control of a single owner, such as a PHA.

B. State or Local Requirements

Most commenters agree with the concept of taking into account state and local requirements. One commenter disagreed because of an asserted lack of enforcement by state or local governments. Commenters suggested that HUD should develop a model ordinance based on a review of state and local standards; it was suggested that HUD's regulations on abatement technologies should be consistent with state and local requirements. Many commenters suggested that state and local standards be used where they provide greater protection than HUD regulation.

HUD proposes to continue its current provision that the PHA is responsible for compliance with state or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement. HUD funds may be used to meet all state or local codes. In order to promote efficiency, HUD will defer to state or local requirements that provide for a comparable level of protection from lead-based paint hazards.

III. Recent HUD Experience

A. Comprehensive Improvement Assistance Program (CIAP) Lead-Based Paint Set-Aside

In public and Indian housing the cost of lead-based paint hazard abatement is a public cost, borne directly by PHAs. PHAs are funded through tenant contributions toward rent (which are based on tenant income without regard to the operating costs of the housing) and by operating subsidy and modernization funds authorized and appropriated by Congress. Pursuant to Notice PIH 83–48, HUD initiated a $35 million set-aside under CIAP in FY 1984 for lead-based paint hazard identification and treatment or elimination. Instructions for application and processing of the 1984 CIAP set-aside were issued in Notice PIH 84–6. Thirty-nine PHAs received funding to treat 99 projects and approximately 14,000 units.

IV. Recent Studies of the Lead-Poisoning Problem

Since publication of the ANPR, several new studies involving lead-based paint poisoning have been released. These studies include a public housing study, the CDC January 1985 Statement and the EPA Air Quality Criteria for Lead. HUD solicits comments on other recent lead-based paint poisoning studies.

A. Public Housing Study

HUD awarded a research contract to Abt Associates to provide an estimate of the incidence and condition of lead-based paint in public housing units and common areas and an estimate of the cost of abatement under different regulatory program approaches. This research, which is in draft and under review by the Department, was part of a larger contract to determine unfunded modernization needs in public and Indian housing. In this study, the Department requested Childhood Lead Poisoning Prevention Programs (CLPPPs) to assist in data collection by visiting five randomly selected local public housing projects (in areas with less than five local public housing projects, all projects were inspected) and inspecting them for the presence of lead paint. A total of 34 local programs visited 131 public housing projects and 262 units to test for the presence of lead-based paint. The programs used XRFs to test units, common areas such as halls, and site-wide facilities for the presence of leaded paint, and the amount of lead. The local inspectors also reported whether the paint was in good condition or defective (*e.g.*, peeling or chipping).

Because prior research led the researchers to expect a higher proportion of lead-based paint hazards in the oldest projects, the analysts split the sample into four age strata and obtained inspections in a larger number of older projects than newer projects. The proposed public housing regulation effectively regards as immediate hazards as paint with over 0.7 lead per mg/cm^2 on chewable surfaces accessible to children or in defective paint on flat surfaces such as walls or ceilings. Using this definition, the preliminary data show immediate hazards in 79% of the sample units built in 1950 or before, 60% of units built between 1951 and 1959, 54% of units built between 1960 and 1977, and only 13% of units built between 1978 and 1983. Analysis of the units inspected that were built in 1978 or later showed only 2 of the 15 sampled units with leaded paint, and none of 15 units had any defective lead-based paint. Also, in the units that did have some lead-based paint, the lead was always found to be at a relatively low level, marginally over the 0.7 mg/cm^2 standard. These findings were expected because, as noted above, it became illegal to sell paint with significant amounts of lead starting in 1977.

At the threshold of 0.7 mg/cm^2, total costs for public housing units requiring abatement average about $1,100 per unit. This includes testing and removing leaded paint from protruding woodwork and covering defective lead paint on walls using a layer of strong fiberglass cloth or wallboard. Abatement costs are estimated without regard to other modernization activities. To the extent that lead paint abatement overlaps work that is required during renovation, the incremental cost of the abatement would be less than the amount estimated.

B. Centers of Disease Control's January 1985 Statement

In January 1985, the Centers for Disease Control (CDC) issued a second revision to its statement entitled *Preventing Lead Poisoning in Young Children.* Based on new research findings on lead toxicity, CDC redefined lead poisoning at a lower blood lead level (from 30 to 25 ug/dl) and updated its recommendations on lead-based paint hazard abatement.

C. EPA Air Quality Criteria for Lead

EPA's Air Quality Criteria for Lead evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The document considers all sources of lead including lead-based paint. At the time of publication of this proposed rule, the criteria document is still under review. HUD considers this document to be a potential source of helpful information for this rulemaking and expects to consider its conclusions in developing a final rule.

V. Proposed Requirements for Public and Indian Housing's Proposed Program

The Department proposes to alter the structure of its regulation implementing the LPPPA. Currently, all regulatory requirements are found in 24 CFR Part 35. It is proposed that Part 35 will continue to state generally applicable minimum requirements but will authorize Assistant Secretaries to

promulgate program-specific regulations which will supersede the general requirements. This will enable requirements to be better integrated into the administrative and operational structures of different programs and will allow for "practicability" determinations to be based on specific program circumstances. (It will not engender undue inconsistency between programs because, under the internal Departmental procedures, all regulations issued by Assistant Secretaries under their delegated authority must be approved by the Secretary.

Few substantive changes in Part 35 are proposed at this time, except that the notification requirements in Subpart A are proposed to be extended to housing constructed during the period 1950–1977 and the testing and hazard abatement requirements of Subpart C are proposed to be limited to housing constructed prior to 1978. Subpart C will apply to "HUD-associated housing" other than public and Indian housing, and inspection and abatement requirements will continue to be based on defective paint. As noted above, the Department will propose regulations superseding Part 35 with respect to other programs.

Requirements for public housing are contained principally in a new Subpart H to 24 CFR Part 965. The proposed regulation in many ways resembles Notice PIH 84–6 for the 1984 CIAP set-aside discussed above in Section III. The five major elements of the public and Indian housing lead-based paint program are: (1) Testing; (2) abatement; (3) funding; (4) notification; and (5) monitoring and enforcement. The lead-based paint program is proposed to be integrated with the existing maintenance and modernization activities.

HUD specifically invites futher comments on (1) Whether all paint surfaces where lead analysis produces a reading greater than or equal to 0.7 mg/cm^2 that are in unsound condition or on chewable surfaces (as defined), and in the locations described in the proposed rule, must be considered "immediate hazards due to the presence of paint which may contain lead and to which children may be exposed" in all circumstances, regardless of date of construction and the presence or absence of children in a unit, and (2) whether the abatement treatment required in this proposed rule is "practicable" in all circumstances encompassed by the proposed rule and should, in the Secretary's discretion, be required for housing constructed after 1950 and, if so, for what periods or under what circumstances. During the further course of this rulemaking proceeding, HUD will continue to evaluate, with the assistance of other Federal agencies with greater experience in the assessment and treatment of environmental health risks, the evidence submitted in response to the ANPR, the further studies referred to in this preambel, and such additional evidence and comments as may be received in response to this notice of proposed rulemaking, that are relevant to the foregoing questions.

A. Testing

The testing requirements incorporate a health approach by establishing, as the first priority, the testing of any unit, regardless of construction date, in which there resides a child with an identifiable elevated blood lead level.

After this first priority and in areas where blood lead level screening is not available, HUD proposes to require PHAs to test their housing by using a random statistical sample large enough to indicate with a high degree of reliability (95%) whether or not there is lead-based paint in each project tested. HUD used this approach in the 1984 CIAP set-aside Notice PIH 84–6. In that notice, PHAs were instructed to use a random sample and test 10 units in each building of 20 units or more and test five units in each building of less than 20 units. Where there are fewer than five units in a building, PHAs were to test all units in that building.

HUD proposes testing on a project basis. HUD believes a project basis is as valid as a building because PHAs generally treat all the buildings within a given project similarly when undertaking maintenance such as painting and because the buildings are usually built at the same time with similar materials. A project would mean a family or mixed development project, excluding buildings for the elderly. An elderly project as defined in the proposed rule means any project assisted under the U.S. Housing Act of 1937 (other than Section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed use project) to elderly families.

Testing units at a project that is proposed for possible abatement is intended to do three things: (1) Determine whether or not there is any lead-based paint at that project; (2) determine the budget required for abatement activities; and (3) identify the specific parts of the project that require abatement.

Even in older buildings, it is possible that there is no lead-based paint present. The only way to determine this is to thoroughly test a number of units using XRFs. Using random selection, the inspectors will test 10 units in each project of 20 units or more and will test six units in each project with less than 20 units, as well as common areas and chewable exterior surfaces. Since the only purpose of the sample and screening process is to determine whether the project has any lead-based paint, it is unnecessary to screen the project if the PHA is already certain from prior testing that lead-based paint is present.

Once it is determined that lead-based paint is present in a project, the PHA must inspect each unit, common area and chewable exterior surface for lead-based paint hazards. This is necessary in order to budget and plan for the abatement process. For example, the budget for abatement will be greatly affected if other comprehensive modernization actions are undertaken at the same time. When the windows are replaced for energy conservation purposes, paint removal is unnecessary and the abatement cost is saved. In other cases, the additional cost of paint removal makes replacement cost-effective, while it may not be cost-effective without this consideration. Thus, the lead paint inspections are important for budgeting and planning decisions.

Data from field testing have shown that there are no certain patterns of lead-based paint. It is possible that five doors in a row show leaded conditions while the sixth door is free of lead-based paint and need not be abated. Testing using XRFs is always much less expensive than abatement, so testing of each part of each unit is required even when general patterns of hazards are present. Careful records of the testing must be kept to guide the abatement actions so that abatement will occur at each place with a lead-based paint immediate hazard, but not where it is unnecessary.

If additional testing is required as described above, it is an eligible activity under CIAP. This differs from the instructions in Notice PIH 84–6. Under that notice, if a PHA wished to test beyond the sample, it could do so at its own expense.

Based on statutory considerations and the likelihood of risk, HUD proposes to prioritize the testing by project type and

age. For project type, the following testing priorities are proposed: (1) Units housing children with EBLs as identified by a health professional at any time; (2) common areas and exteriors or projects housing children with EBLs as identified by a health professional at any time; and (3) all other family projects, including common areas and exteriors and non-dwelling facilities that are commonly used by children under seven years of age (such as community, health care and day care centers). In cases where a project consists of buildings for families and for elderly persons, the units, common areas, and exteriors of the family buildings would be tested. No projects for the elderly or buildings occupied only by elderly persons would be tested because the hazards of lead-based paint poisoning are associated with children.

Testing is proposed to be conducted first in pre-1950 projects, and, secondly, in projects constructed between 1950 and 1972. Projects constructed after 1972 and prior to 1978 need be tested only if there has been a previous demonstration that lead-based paint is present in some projects operated by the PHA and constructed during that period. Such a demonstration could occur through testing of a unit occupied by a child with identified elevated blood lead level or through a state or local testing program.

The proposed rule would require PHAs to test all walls, ceilings, doors and frames, windowsills and frames, and woodwork in all rooms of the units sampled. PHAs would be required to maintain records of which units, buildings, and projects have been tested and the results of the testing and the condition of the painted surfaces by location within the unit, common area and exterior. Units previously tested according to the specifications of this rule or tested according to substantially equivalent state or local laws, ordinances, codes or regulations, are not required to be retested. PHAs must have records which demonstrate the testing was conducted according to the specifications of this rule, or a HUD determination that testing was performed according to substantially equivalent specifications. HUD proposes to require that all testing be completed within two years from the effective date of a final rule with this provision except where there is a lack of testing equipment or funds. HUD requests public comments on the feasibility of the two-year timeframe, given the number of testing machines or CLPPPs in the country and the size and number of PHAs.

HUD intends to provide funds from CIAP over the next two years which together with funds likely to be available from PHA operating income and state, local and tribal sources will be sufficient to complete testing within the two-year timeframe. The regulation proposes that a PHA first rely on local or state public health or housing agencies for testing and to seek HUD's financial assistance only as a last resort after other resources have been exhausted. PHAs would be required to certify, if they need CIAP funds for testing, that no local, state or tribal resources were currently available and they would not use CIAP funding if local, state or tribal resources became available during the testing period. The regulation would require the PHA to begin testing for lead-based paint immediately after a final regulation is effective. HUD suggests this approach because there are approximately 50 active CLPPP programs capable of testing lead-based paint, which have provided services to PHAs in the past at nominal or no cost. HUD also requests comments on other available testing resources for PHAs.

The PHA has various options regarding the testing service. The PHA could contract with public or private entities for testing or contract with the public or private entities to train the PHA staff. HUD may fund the testing if other sources are unavailable and is considering the possibility of placing testing services on the Consolidated Supply Program.

In testing for lead-based paint, HUD proposes that the standard for reliable detection of surface area would be readings of greater than or equal to 0.7 mg/cm^2. The 0.7 mg/cm^2 standard is recommended in CDC's January 1985 statement. Testing to more stringent standards is permitted if required by state or local law.

For quality control, HUD also proposes to require the PHA to certify that it has complied with local and state public health or housing requirements for test procedures. The PHA certification must be supported by evidence from the locality or state that the testing program meets local or state standards. This evidence must be available in the PHA's files. HUD requests comments regarding other quality control techniques and HUD's responsibility when there are no local or state standards or supervision. HUD also requests comments regarding any tribal quality control standards.

In cases where HUD is paying for the testing, portable XRFs or substantially equivalent methods are required for testing. Portable XRFs are industry acceptable, recommended by CDC, effective and efficient, and less costly than laboratory chemical analysis. Laboratory chemical analysis is discouraged because there is no direct equivalence between this type of analysis and the readings given by the XRFs. Lead paing analysis by laboratory chemical analysis also takes longer than by use of an XRF. The XRF provides immediate readings. In the laboratory chemical analysis approach, it is estimated that thirty to forty samples can be analyzed per day at a cost of $12 per sample in a public laboratory. Typically, six to eight samples are taken per room. Thus, it costs about $84 per room to test for lead paint using the laboratory chemical analysis method. The cost for this service at private laboratories is estimated at $25 per sample or $175 per room. The cost of using an XRF is estimated at $20 per room (taking twenty to twenty-five readings per room) and typically five two-bedroom units can be tested in one day. Two companies are currently manufacturing XRFs. The cost is between $6,500 and $8,000 per machine, and the yearly maintenance is approximately $1,500. Certain CLPPPs may be using only laboratory chemical analysis. HUD is interested in learning which localities use only this method. HUD is considering paying (through CIAP) for the equivalent cost of using XRFs, but requests comments from local lead programs and the scientific community regarding laboratory chemical anslysis standards and equivalency of test results with XRFs.

B. Abatement

When defective lead-based paint or intact lead-based paint on a chewable surface is identified, the order of abatement is as follows: (1) Units housing children identified with EBLs; (2) common areas and exterior surfaces of projects housing children with EBLs; and (3) all other family projects including common areas and exterior surfaces and non-dwelling facilities which are commonly used by children under seven years of age (such as community, health care and day care centers). These priorities are generally the same as provided under Notice PIH 84–6. Within the third category, abatement activity should be conducted in various projects, and within projects, in various areas (*i.e.*, exterior, interior, common spaces, units) in priority order in relation to the extent of the lead-based paint immediate hazard to children under seven years of age, as determined by the testing results.

The degree of abatement is based upon the CDC statement, local and state practices, risk to tenants and practicability. The degree of abatement would vary between interior and exterior surfaces including common areas. For interior surfaces, abatement treatment would be provided to defective and intact chewable lead-based paint surfaces. In the unit where defective paint is found on any portion of a wall or ceiling surface, the entire wall or ceiling would be abated. Within five days after an EBL child has been identified and the PHA has been notified and before the hazards can be fully abated, the proposed rule would require the PHA to take temporary emergency intervention actions. These actions include removal of all scaling paint from places such as walls, windowsills and frames, door frames and doors that are within easy reach of the child. Full abatement treatment is required within fourteen days after identification of an EBL, if the PHA has available funds. The PHA may request reprogramming of previously approved CIAP funds or apply immediately for emergency modernization funds, if other funding sources are unavailable. For common areas and exterior surfaces and interiors and exteriors of non-dwelling facilities, abatement would include all defective spots and chewable surfaces.

In this rule, HUD proposes to define "defective lead-based paint" to mean any paint on applicable surfaces, having a lead content greater than or equal to 0.7 mg/cm ^{2}, that is cracking, scaling, chipping, peeling or loose, and to define "chewable surfaces" as any painted surface, that is reachable up to 5 feet from the floor, and chewable, *i.e.*, protruding corners of walls, windowsills and frames, doors and frames and protruding woodwork. Defective and intact chewable lead-based paint surfaces are considered, in the statutory phrase, "immediate hazards." Intact lead painted surfaces and other chewable surfaces are considered potential hazards rather than immediate hazards because of lack of evidence of poisoning from these surfaces.

The methods of abatement are not prescribed, but the proposed rule requires that the immediate hazard be thoroughly removed or covered. Covering could include such methods as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removal could include such methods as scraping, after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute hazard abatement. HUD suggests that PHAs consult the CDC guidelines on hazard abatement. CDC recommends that abatement involve the following four steps: (1) Removing lead paint from protruding wood trim and covering or removing defective lead-based paint on walls; (2) thorough vacuuming to clean up the debris; (3) wet scrubbing for maximum elimination of fine lead-bearing particles; and (4) repainting the area with lead-free paint (that is, paint containing less than 0.06% of lead in the final dried solid).

HUD joins CDC in cautioning PHAs of the abatement hazards in standard removal methods. Before and during abatement, certain precautions are essential. Carpets, rugs, upholstered furniture, bedding, clothing, and eating and cooking utensils must be sealed as tightly as possible in plastic to protect them from the enormous increase in lead-bearing dust created by the removal procedures. When feasible, this work should be carried out in one room at a time, with the room closed off and all furnishings removed. Until the first three steps of the abatement process discussed above are completed, all young children and pregnant women should live elsewhere both day and night. Those doing the work should comply with OSHA standards (29 CFR Part 1910); they should use respirators and wear coveralls, which must not be taken to the workers' homes for laundering.

Removing paint by heat, sanding, scraping and liquid paint removers is hazardous. Most solvents in liquid paint removers evaporate rapidly and are flammable and toxic. When gas torches, heat guns, and sanding devices are used to remove paint, air lead levels increase in the work area. Sanding produces the greatest deposits of lead in dust, with rates as high as 10mg of lead/sq. ft./hour. Scraping will probably produce fewer fine particles than sanding. Therefore, sanding down to bare surfaces is not recommended.

Cleanup after lead-paint removal is important. The area should be vacuumed thoroughly and then wet-scrubbed with strong detergents. PHAs and their contractors shall deposit lead-based paint debris in accordance with all local, State and Federal requirements. EPA regulations provide that if the concentration of lead is 5.0 milligrams per liter, the waste is considered hazardous and toxic and must be disposed of in a hazardous waste landfill (40 CFR 264.300). See also 40 CFR parts 260–271.

Tenant relocation should be considered during certain methods of abatement. The regulation would require PHAs to take appropriate steps to protect tenants from hazards such as lead-based paint dust and fumes during the abatement process. At a minimum, the PHA should assure that young children and pregnant women are not exposed to lead-based paint dust and fumes.

C. Funding

If State and local funds are unavailable for testing and abatement, HUD expects that PHAs will comply with this regulation through the use of operating income or the Comprehensive Improvement Assistance Program (CIAP) under section 14 of the United States Housing Act of 1937 (42 U.S.C 1437), which is funded by annual appropriations. No revision to Performance Funding System calculations will be based on these requirements. The demand for CIAP funds exceeds the available amounts; therefore, needs are prioritized by urgency. Lead-based paint testing and abatement will fit within this framework.

The ANPR requested comments concerning lead-based paint hazard elimination as emergency modernization. All but one of the 11 commenters responding to this question agreed that lead-based paint hazard elimination may be considered emergency modernization under at least some circumstances. Some commenters specified conditions for the use of emergency modernization funds including: (1) Use emergency modernization funds when a child living in or frequently visiting a dwelling unit is identified as having undue lead absorption; (2) do not limit use of emergency modernization assistance to housing with children under seven years of age; and (3) use emergency modernization assistance if the unit is occupied by an "at-risk" family and paint is chipped, peeling or cracking. Some commenters believed because of PHAs' ongoing maintenance programs and participation in the CIAP program, lead-based paint has been virtually eliminated as a major hazard in conventional public housing. Some commenters suggested that the criteria in the 1984 CIAP set-aside Notice PIH 84–6 should be applied to PHAs seeking funds under emergency modernization.

The ANPR also asked to what extent should the priority decisions between lead-based paint abatement and other modernization needs, such as safe wiring, working furnaces, workable incinerators, leaking roofs or non-working sanitary facilities or elevators,

be left with PHAs in designing modernization programs and applying for funds. Seven commenters responded to this question. One PHA believed that it should be permitted to set its own priorities on emergency items. Other commenters rated lead-based paint removal as a high priority as indicated by the following comments: (1) Lead-based paint abatement should be considered the first priority or at least one of the first; (2) lead-based paint abatement should have priority over other needs if children under seven years of age are present; and (3) funds should be allocated on the basis of the most immediate effect on health and safety. CDC declined to suggest "where lead hazard abatement ranks in the competition for modernization" where children do not have elevated blood lead levels but the unit has lead-based paint. One commenter suggested that intact lead-based paint should be considered a low priority. One commenter suggested a work schedule for lead-based paint removal (*i.e.*, remove lead-based paint first from units with children six months to seven years old, and secondly from units with children seven years to twenty years old, and then from all units). Another commenter recommended a five-year period for the elimination of all lead-based paint with priority based on age and condition of housing regardless of tenant inconvenience.

The first step in the CIAP funding decision is Preliminary Application. Preliminary Applications are first screened on the basis of such factors as the urgency of the need and the management and modernization capability of the PHA. Lead-based paint needs will be considered among others at this screening. Section 968.5(d) is being amended to state that the HUD office shall review the Preliminary Applications. Those selected for Joint Review receive further scrutiny during a HUD on-site review. After Joint Review HUD decides which PHAs will be invited to submit Final Applications based upon the funding preferences.

Under CIAP, there are currently three funding preferences. *Group 1* includes projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health or safety (emergency modernization and emergency work under homeownership modernization). Under emergency modernization, funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. *Group 2* includes projects (a) having conditions which threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units and (b) located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). *Group 3* includes other projects not meeting the criteria of Groups 1 or 2 (comprehensive, special purpose and homeownership modernization).

HUD is proposing to amend the funding preferences. Lead-based paint hazard abatement would fit within revised Groups 1 and 2. Testing and abatement of EBL units, common areas and exteriors would be an eligible activity under Group 1. The PHA may request reprogramming of previously approved CIAP funds or apply immediately for emergency modernization funds, if other funding sources are unavailable.

All other required lead-based paint testing (not abatement) would also be eligible under Group 1. Testing under this category would be a lower priority than testing and abatement of EBL units, common areas and exteriors and other emergencies and would not have to be completed within a year. The Department may control the use of funds for this purpose by setting a limit in the annual funding notice.

All other lead-based paint abatement would fall within Group 2 as a condition that threatens tenant health and safety and is a funding preference within that Group. Other funding preferences may include correction of physical disparities under the nondiscrimination preference, funding of subsequent stage comprehensive modernization and cost benefit. To be eligible under Group 2, lead-based paint abatement would have to occur as part of comprehensive modernization and may be subject to cost benefit ranking within established ranges, based on severity of abatement needs. Cost benefits are composed of a cost benefit ratio and improved habitability. The cost benefit ratio is the total estimated annual savings of all proposed physical and management improvements divided by the total cost of such improvements. Improved habitability includes those factors for which actual dollar savings are difficult to identify and includes such factors as prevention of unit turnover and vacancies, improved security and reduced vandalism.

To the extent funds are available, a PHA would be required to address lead-based paint hazards within 5 years after completion of testing of the entire PHA inventory of pre-1972 housing, excluding projects, buildings and common areas for the elderly. Actions to address lead-based paint hazards would be required to be reflected in a PHA's comprehensive plan for modernization. It is important that PHAs with comprehensive modernization programs in process comply with the lead-based paint requirements and inform HUD whether the projects within such programs have been tested for lead-based paint. If they have not included such testing and abatement as part of their comprehensive modernization program, they must inform HUD how they intend to accomplish this and with what resources they will carry out testing and abatement, through local resources, operating funds, or CIAP. PHAs may not enter into contracts under CIAP for treatment of areas which could have lead-based paint, other than for testing lead-based paint, until such testing is completed and any necessary abatement is included in the revised modernization budget, if necessary.

D. Notification

All commenters responding to the notification questions of the ANPR agreed that HUD should revise present notifications to reflect current knowledge. One commenter suggested including CDC guidelines relating to low-lead exposure. Other commenters suggested informing parents of the probable absence of noticeable symptoms and the possibility of learning disabilities related to lead-based paint poisoning. Other commenters suggested that the hazards to those other than children should be described and that every tenant's file should include a signature acknowledging receipt of the notice.

The ANPR also asked if there was a need to clarify the notices by shortening and simplifying them. All commenters responding to this question agreed that the notices should be shortened and simplified. Other suggestions included multilingual notices, notices that advise residents to contact PHAs about loose, peeling, cracking and falling paint, and notice in the form of a hand-out for owners outlining the effects of lead poisoning, treatment methods and the results of court cases that have involved lead poisoning. It was stated that the hand-out should also outline the action a tenant should consider whenever their dwelling contains lead-based paint. Notices should also warn the tenants of where lead poisoning can occur and suggest periodic screening.

All commenters who addressed the question suggested that notices should be distributed to occupants of post-1950

housing. One commenter added that the notices should be orally explained by appropriately trained personnel. Another commenter suggested that HUD field offices should verbally notify tenants of their plan for dealing with a particular unit.

The proposed regulation would require that purchasers and tenants of all HUD-associated housing constructed prior to 1978 be notified about the hazards of lead-based paint. HUD proposes to delete the notices (Appendices I and II) from Part 35 to permit the issuance of more program-specific notices. HUD expects that the notice for public housing tenants will request tenants to notify the PHA of defective paint conditions.

E. Monitoring and Enforcement

The ANPR asked to what extent HUD should alter its present monitoring and enforcement approaches as applied to specific progams. One PHA suggested that a PHA should be required to certify compliance with applicable regulations as part of its engineering survey. In case of noncompliance, HUD could require the PHA to develop a work plan and monitor it. Two commenters stated that the current regulations are not being carried out and suggested that HUD could: (1) Condition its disbursement of CIAP funds to a PHA on the use of those funds for lead paint abatement as a high priority; (2) impose conditions on or threaten the withdrawal of operating subsidies as well as receivership for a PHA's disregard of the regulations; and (3) encourage communication between local programs.

Other general suggestions included: (1) Monitoring at the regional level; (2) increasing funding for monitoring and enforcement functions; (3) enforcing regulations uniformly and using sanctions to encourage prompt compliance; and (4) training personnel to administer the regulations and providing HUD field offices with health professionals to provide technical assistance. This assistance could include: (a) Ensuring that XRFs are calibrated correctly, (b) giving notice of the hazards of lead-based paint to tenants in housing units, (c) assisting the tenants in moving to safe quarters during the abatement process, (d) assisting with lead screening of all children (under seven years of age) in housing units, and (e) supervising clean-up units following abatement and safe disposal of lead-based paint debris.

Field office monitoring of PHAs will cover compliance with these regulations. Monitoring of completion of testing and abatement of lead-based paint immediate hazards will be carried out in several ways. All PHAs must address lead-based paint in their comprehensive plans. Comprehensive plans asses a PHA's needs and how they will be met. These plans are reviewed and approved by HUD. PHAs with comprehensive modernization programs in progress will be required to explain how they will test and where necessary, abate immediate hazards. Monitoring will also be conducted through annual performance reviews, project engineering surveys and maintenance operations reviews. Sanctions available to the Department will be used, as needed.

VI. Section by Section Review of Proposed Regulations

The proposed regulations amend Parts 35, 905, 965 and 968. Each of these amendments are described below.

Part 35

In Subpart A, § 35.1 is proposed to be amended by changing the reference to 1950 to 1978. Definitions of immediate hazard and potential hazard in § 35.3 are proposed to be deleted. Section 35.5 is proposed to be amended to refer to the hazards of lead-based paint in HUD-associated housing constructed prior to 1978 and to delete reference to the prescribed text of notices in Appendix I.

In Subpart C, § 35.20 has been revised to more accurately reflect section 302 of the LPPPA. Definitions used only in Subpart C of Part 35 are listed in § 35.22. Section 35.24 has also been amended to limit inspection and abatement treatment prescribed as minimum requirements for all programs to housing constructed prior to 1978, authorize superseding program-specific regulations, and revise treatment methods. Section 35.25, which provides for a lead-based paint clearinghouse in HUD, is proposed to be deleted. HUD has received little information or suggestions with respect to elimination of lead-based paint hazards through this clearinghouse.

Subpart E of Part 35 is proposed to be amended by simplifying the definitions and amending the requirements in a similar fashion to § 35.24.

Part 905

Section 905.107 is proposed to be amended by adding a specific requirement for lead-based paint poisoning prevention compliance. IHAs are also covered by Part 965 as amended herein.

Part 965

These proposed rules would add a new Subpart H to Part 965 for lead-based prevention. The subject matter of this new subpart is discussed extensively above.

Part 968

Section 968.4 is proposed to be amended by specifically including lead-based paint testing and abatement as eligible modernization costs. Section 968.5(g)(3) is proposed to be amended by allowing funding of lead-based paint testing and abatement in one or two stages. Testing is to be completed within two years and abatement is to be completed within five years after completion of testing subject to fund availability. The funding preferences in § 968.5(h) are also proposed to be expanded to include lead-based paint testing and abatement. This proposed rule also revises and expands the funding preferences and the application screening process under CIAP. This section is discussed above in detail in Section V.C.

Other Matters

Regulatory Flexibility Act Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. HUD finds that there are not anticompetitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

OMB Control Number

The information collection requirements contained in §§ 965.703(d), 965.704(f), 968.705(a), 968.5(i)(6)(ix) and 968.9(e) of this proposed rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be

announced by separate notice in the **Federal Register.**

Regulatory Impact Analysis

This rule qualifies as a major rule as defined in Executive Order 12291. The Department is conducting a cost analysis of the proposed regulations as part of the public and Indian housing modernization needs study. Once completed, this cost analysis will serve as a Regulatory Impact Analysis. The Department interprets the Executive Order to require an analysis of potential costs and cost alternatives without regard to the degree to which cost-effectiveness is an appropriate standard under the applicable statute. The cost study will be available for the final rulemaking. The procedures otherwise required under Executive Order 12291 were not completed as to this proposed rule because of a deadline imposed by judicial order, as described above.

Semiannual Agenda of Regulations

This rule was listed as sequence number 764 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44165, 44177) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 35

Lead poisoning, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 965

Energy conservation, Loan programs: housing and community development, Public housing, Utilities.

24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Substantial rehabilitation.

Accordingly, 24 CFR Parts 35, 905, 965, and 968 would be amended as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation of Part 35 would be revised as set forth below and any authority citations following any section in Part 35 would be removed.

Authority: Pub. L. 91–695, 84 Stat. 2078, as amended by Pub. L. 93–151 (42 U.S.C. 4801–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

2. Subpart A would be revised to read as follows:

Subpart A—Notification To Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1978 of the Hazards of Lead-Based Paint Poisoning

§ 35.1 Purpose and scope.

This Subpart A establishes procedures to assure that purchasers and tenants of all HUD-associated housing constructed prior to 1978 are notified of the hazards of lead-based paint which may exist in such housing, of the symptoms and treatment of lead-based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards.

§ 35.3 Definitions.

Act. The Lead-Based Paint Poisoning Prevention Act, Pub. L. 91–695, 84 Stat. 2078, as amended by Pub. L. 93–151 and Pub. L. 94–317 (42 U.S.C. 4801–4846).

Assistant Secretaries. The Assistant Secretaries in the Department of Housing and Urban Development.

Department of HUD. The U.S. Department of Housing and Urban Development.

HUD-associated housing. Any residential structure, as defined in this section, that is owned by the Department or Secretary of HUD or financially assisted under any program administered by the Secretary, when such structures are being constructed, sold, purchased, leased, rehabilitated (including routine maintenance work), modernized or improved with any form of HUD financial assistance whether by grant, loan, advance, housing assistance payments, the proceeds of a HUD-guaranteed loan or a HUD-insured mortgage.

Residential structure. Any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

Secretary. The Secretary of Housing and Urban Development or a HUD official delegated the Secretary's authority with respect to the Act.

§ 35.5 Requirements.

(a) Purchasers and tenants of HUD-associated housing constructed prior to 1978 shall be notified:

(1) That the property was constructed prior to 1978:

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning; and

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards).

Prospective purchasers or renters shall receive the above notifications prior to purchase or rental.

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include the preparation and prescription of appropriate notices or brochures providing the required information, and the establishment of procedures to:

(1) Provide evidence (including certification) that the prescribed notification has been received by purchasers and tenants of HUD-associated housing constructed prior to 1978, and

(2) Require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure that purchasers and tenants receive the prescribed notification.

3. Section 35.20 would be revised to read as follows:

§ 35.20 Purpose and scope.

This Subpart C implements the provisions of section 302 of the Act with respect to establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing HUD-associated housing which may present such hazards.

4. Section 35.22 would be revised to read as follows:

§ 35.22 Definitions.

As used in this subpart:

HUD-associated housing shall have the meaning ascribed in § 35.3.

Residential structure shall have the meaning ascribed in § 35.3.

Applicable surface means any interior surface of a residential structure, whether accessible or not, and any exterior surface of a residential

structure such as a stair, deck, porch, railing, window, or doors which is readily accessible to children under seven years of age.

Defective paint surface means an applicable surface on which the paint is cracking, scaling, chipping, peeling, or loose.

5. Section 35.24 would be amended by revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(v), (3), and (4) and adding (b)(5) to read as follows:

§ 35.24 Requirements.

(a) Each Assistant Secretary shall establish procedures with respect to programs involving HUD-associated housing within his or her administrative jurisdiction to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to such housing which may present such hazards.

(b) Subject to the provisions of separate regulations promulgated with respect to any program by the Assistant Secretary having jurisdiction over such program, the following minimum requirements shall apply to all programs:

(1) All applicable surfaces of HUD-associated housing constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. Responsibility for such inspections shall be as follows:

* * * * *

(v) Low-income public and Indian housing (including occupied units) shall be inspected and abated by the local housing authority, local public agency or other agency responsible for maintenance, management, repair and operation of such housing.

* * * * *

(3) Treatment necessary to eliminate immediate hazards shall, at a minimum, consist of covering or removal of defective paint surfaces found in HUD-associated housing constructed prior to 1978. Covering may be accomplished by such means as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removal may be accomplished by such methods as scraping, after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute adequate treatment. Where possible due to the nature of the HUD mortgage insurance or other assistance being provided, required treatment shall be completed before occupancy and shall constitute a condition to the provision of such mortgage insurance or other assistance.

(4) Appropriate provisions for the inspection of applicable surfaces and elimination of hazards and provisions necessary for enforcement of the requirements of this section shall be included in contracts and subcontracts involving HUD-associated housing constructed prior to 1978.

(5) Any requirement of this section shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated pursuant to the authorization granted in this section and supersedes, with respect to programs with its defined scope, the requirements prescribed by this section. See, *e.g.*, 24 CFR Part 965, Subpart H (Public and Indian Housing).

§ 35.25 [Removed]

6. Section 35.25 would be removed.

7. Section 35.54 would be revised to read as follows:

§ 35.54 Definitions.

The definitions contained in §§ 35.3 and 35.22 shall apply to this Subpart E. The following definitions are also applicable to this Subpart E:

Federal agency. The United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

Federally-owned properties. Any properties owned by a federal agency as defined in this section.

Use for residential habitation. The use of a property as a residential structure as defined in § 35.3.

8. Section 35.56 would be amended by revising paragraphs (a)(1), (2), and (3) and removing (a)(4) to read as follows:

§ 35.56 Requirements.

(a) * * *

(1) All applicable surfaces of residential structures constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and

(2) Treatment necessary to eliminate immediate hazards shall consist of covering or removal of defective paint surfaces. Covering may be accomplished by such means as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removal may be accomplished by such methods as scraping, after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute adequate treatment.

(3) Prospective purchasers are provided all notifications described in § 35.5(a).

* * * * *

Appendices I and II [Removed]

9. Appendices I and II would be removed.

PART 905—INDIAN HOUSING

10. The citation of authority for Part 905 would be revised to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. (7)(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); § 905.107(f) also issued under sec. 302, Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822).

11. Section 905.107 would be amended by adding paragraph (f) to read as follows:

§ 905.107 Compliance with other Federal requirements.

* * * * *

(f) *Lead-based paint poisoning prevention.* The IHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846), Subparts A and B of 24 CFR Part 35, and Subpart H of 24 CFR Part 965, PHA-Owned or Leased Projects—Maintenance and Operation.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

12. Part 965 would be amended by adding Subpart H—Lead-Based Paint Prevention to read as follows:

Subpart H—Lead-Based Paint Poisoning Prevention

Sec.

Authority: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846).

Subpart H—Lead-Based Paint Poisoning Prevention

§ 965.701 Purpose and applicability.

The purpose of this subpart is to implement the provisions of section 302

of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801–4186, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to establishing maintenance procedures to eliminate, as far as practicable, the immediate hazards due to the presence of paint which may contain lead and PHA/IHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to PHA-owned low income public housing projects, including Turnkey III, Mutual Help and conveyed Lanham Act and Public Works Administration projects, and to Section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the Section 23 Leased Housing Non-Bond-Financed Program, the Section 10(c) Leased Housing Program, and the Section 23 and Section 8 Housing Assistance Payments Programs. This subpart is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(5) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35.

§ 965.702 Definitions.

Applicable surface. Any interior surface, whether accessible or not, and any exterior surface such as a stair, deck, porch, railing, window, or doors which is readily accessible to children under seven years of age.

Chewable surface. Any painted surface reachable up to five feet from the floor and chewable, *e.g.* protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective lead-based paint. Paint on applicable surfaces having a lead content of greater than or equal to 0.7 mg/cm^2, that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Family project. Any project assisted under the U.S. Housing Act of 1937 (other than Section 8 or 17 of the Act) which is not an elderly project. For this purpose, an elderly project is one which was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project which meets these qualifications shall, for purposes of this subpart, be excluded from any family project.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 0.7 mg/cm^2.

§ 965.703 Inspection and testing.

(a) *General.* All units within the coverage of this section shall be tested in accordance with the requirements set forth herein not later than [two years after effective date of rule]. If records establish that units or projects were tested or treated in accordance with the standards prescribed in this subpart prior to [effective date of this rule], such units or projects are not required to be re-tested or re-treated.

(b) *Random sample.* Where random sample testing is prescribed, ten units shall be tested in projects with 20 or more units, and six units shall be tested in projects with fewer than 20 units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as community, health care and day care centers. All applicable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all units in the project are required to be tested. If lead-based paint is found in any common areas or exterior applicable surfaces in the sample, all common areas and exterior applicable surfaces in the project are required to be tested.

(c) *Testing requirements.* Testing shall be conducted in the following order of priority:

(1) Any unit housing a child with an elevated blood lead level as identified by a health professional at any time, and the remaining units, and, by random sample, the common areas and applicable exterior surfaces of a project in which a unit tested under this priority has been found to contain lead-based paint. Testing of the unit housing a child with an elevated blood lead level shall be completed within five days after notification to the PHA of the identification of the child.

(2) By random sample, all family projects constructed prior to 1950.

(3) By random sample, all family projects constructed after 1949 and prior to 1973.

(4) By random sample, all family projects constructed during or after 1973 and prior to 1978, if the presence of lead-based paint in any project operated by the PHA constructed during such period has been confirmed in a test conducted under the priority established in paragraph (c)(1) of this section or in any other manner, such as by an inspection under a local Childhood Lead Poisoning Prevention Program.

Testing services available from state, local or tribal health or housing agencies shall be utilized to the extent available. Testing will be considered an eligible modernization cost under Part 968 only upon PHA certification that testing services are otherwise unavailable. Testing shall be performed by X-ray fluorescence analyzer (XRF) or a substantially equivalent method approved by HUD. Test readings of 0.7 mg/cm^2 or higher are considered positive for presence of lead-based paint. The PHA shall maintain records of which units, buildings and projects have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, common area or exterior surface.

(d) *Records.* The PHA shall maintain records of lead-based paint testing, and shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD.

§ 965.704 Hazard abatement requirements.

(a) *General.* Subject to availability of resources, all abatement actions required by this section shall be completed within five years after completion of all testing required by § 965.703.

(b) *Abatement actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(1) Unit housing a child with an identified elevated blood lead level. If defective lead-based paint is found in any portion of a wall or ceiling surface within the unit, the entire wall or ceiling, and any chewable surface found to contain lead-based paint, shall be treated. Full abatement treatment shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, reprogramming of previously approved CIAP funds, or emergency modernization funds, should be requested immediately. If full treatment cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal

with strong detergents) shall be taken within such time.

(2) Common areas and exterior applicable surfaces of projects in which children with identified blood lead levels reside. Abatement treatment shall be provided to defective lead-based paint spots on applicable surfaces other than chewable surfaces, and to complete chewable surfaces containing defective or intact lead-based paint.

(3) Other family projects. Abatement treatment shall be provided to all applicable surfaces for which positive testing results have been found. Where defective lead-based paint is found on a wall or ceiling surface within a unit, the entire wall or ceiling surface should be treated. In common areas, including interior surfaces of non-dwelling facilities, and on applicable exterior surfaces, treatment should be provided to defective lead-based paint spots and to complete chewable surfaces containing defective or intact lead-based paint. Treatment within a project should be prioritized in relation to the immediacy of the hazards found to children under seven years of age.

(c) *Abatement methods.* Abatement treatment shall be provided by such methods (including removal by heat, chemicals, sanding or covering with fiberglass cloth barrier or gypsum wallboard) as the PHA shall select as being the most cost-effective adequate treatment for the surface under the circumstances. Washing and repainting without thorough removal or covering does not constitute adequate abatement treatment.

(d) *Tenant protection.* The PHA shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where deemed necessary, tenant relocation during abatement procedures may be accomplished with CIAP assistance.

(e) *Disposal of lead-based paint debris.* The PHA shall dispose of lead-based paint debris in accordance with applicable local, state or Federal requirements. (See, *e.g.*, 40 CFR Parts 260–271.)

(f) *Records.* The PHA shall maintain records of abatement treatment provided under this subpart, and shall report information regarding such treatment, and its compliance with the requirements of 24 CFR Part 35, Subpart A, in accordance with such requirements as shall be prescribed by HUD.

§ 965.705 Compliance with state and local laws.

(a) *PHA responsibilities.* Nothing in this subpart H is intended to relieve a PHA of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement. The PHA shall maintain records evidencing compliance with applicable state or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

§ 965.706 Monitoring and enforcement.

PHA compliance with the requirements of this subpart will be included in the scope of HUD monitoring of PHA operations. Noncompliance with any requirement of this subpart may subject a PHA to sanctions provided under the Annual Contribution Contract or to enforcement by other means authorized by law.

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

13. The citation of authority for Part 968 would be revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437), sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)), Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846).

14. Section 968.4 would be amended by adding new paragraphs (h) and (i) to read as follows:

§ 968.4 Eligible costs.

* * * * *

(h) *Lead-based paint testing.* Lead-based paint testing costs, as described in § 965.703, are eligible modernization costs.

(i) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in § 965.704, are eligible modernization costs.

15. Section 968.5 would be amended by revising paragraph (d), adding a new paragraph (g)(3), revising paragraph (h), and adding a new paragraph (i)(6)(ix) to read as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(d) *HUD screening.* The HUD office shall review the Preliminary Application. The HUD office shall select the Preliminary Application for further processing on the basis of such factors as, the urgency of the need and the management and modernization capability of the PHA.

* * * * *

(g) * * *

(3) *Lead-based paint testing and abatement funding.* In general, modernization involving lead-based paint testing and abatement may be funded in one or two stages as described in paragraphs (g) (1) and (2) of this section. All testing shall be completed within two years from [the effective date of this rule] except where there is a lack of testing equipment or funds to meet this requirement, and all abatement shall be completed within five years (unless funding is unavailable) after completion of testing of the entire PHA pre-1973 inventory, excluding projects, buildings and common areas for the elderly.

(h) *HUD preliminary funding decisions.* After all of the Joint Reviews, the HUD office will determine whether the PHA will be invited to submit the Final Application for the identified project(s) by considering whether the PHA has adequately addressed all relevant issues, as determined by HUD, giving preferences to PHAs which request assistance for:

(1) Group 1, projects having emergency conditions that pose an immediate threat *(i.e.*, must be corrected within one year of funding approval) to tenant health or safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all testing required by § 965.703 and lead-based paint hazard abatement in public and Indian housing family units, common areas, and exteriors of buildings in which children with elevated blood levels (EBLS) reside (see § 965.704(b) (1)–(2)).

(2) Group 2, projects having conditions which threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units and located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). Within this category,

the Secretary may give priority to additional factors, such as the correction of physical disparities under the nondiscrimination preference, second or subsequent stage of comprehensive modernization, cost benefit, and the severity of lead-based paint hazard abatement needs. Lead-based paint hazard abatement pursuant to § 965.704(b)(8) is includible within this group.

(3) Group 3, other projects located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit.

* * * * *

(i) * * *

(6) * * *

(ix) The PHA must certify that it will comply with local and state public health testing requirements.

* * * * *

16. Section 968.9 would be amended by revising paragraph (e) to read as follows:

§ 968.9 Other program requirements.

* * * * *

(e) *Lead-based paint poisoning prevention.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846) and HUD implementing regulations (24 CFR Part 35 and Part 965, Subpart H). PHAs with comprehensive modernization programs in progress on (effective date of final rule) shall inform HUD whether the projects within such programs have been tested for lead-based paint. If not, the PHA must inform HUD how it intends to accomplish this. PHAs may not enter into contracts under CIAP for treatment of areas which could have lead-based paint, other than for testing lead-based paint, until such testing is completed and any necessary abatement is included in the revised modernization budget, if necessary.

Dated: February 11, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-3360 Filed 2-13-86; 8:45 am]

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Federal Register

Friday
February 14, 1986

Part IV

Environmental Protection Agency

40 CFR Part 180

Tolerance for Ethylene Dibromide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-2971-3; OPP-300141A]

Tolerance for Ethylene Dibromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of ethylene dibromide (EDB) *per se* of .03 ppm (30 ppb) in the edible pulp of mangoes that have been fumigated after harvest with the insecticide ethylene dibromide (EDB) in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture, effective until September 30, 1986, with the possibility of extension for an additional year.

EFFECTIVE DATE: Effective on February 14, 1986.

ADDRESS: Written objections, identified by the document control number [OPP-300141A] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room M-3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Linda K. Vlier, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Room 711, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7451).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 27 (50 FR 48779), which proposed the reestablishment of an interim tolerance for residues of EDB *per se* on the raw agricultural commodity mangoes resulting from the fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. The Agency proposed that this tolerance would expire on September 30, 1986, with the possibility of renewal for no more than one additional year. This one-year renewal would be considered if by September, 1986, USDA and the exporting countries had substantially moved toward completion of the basic research required to establish alternative fruit fly disinfestation protocols, and data indicate that implementation of non-EDB fruit fly disinfestation techniques by the 1987/1988 harvest season is probable.

An interim tolerance of 30 ppb (.03 ppm) had previously been established in 40 CFR 180.397 for residues of EDB in the edible pulp of mangoes resulting from the fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program of the U.S. Department of Agriculture (50 FR 2550, January 17, 1985). That tolerance rule expired on September 1, 1985.

By notice published in the **Federal Register** of December 27, 1985 (50 FR 52964), the comment period on the proposed rule was extended to January 10, 1986.

No requests for referral to an advisory committee were received in response to the proposed rulemaking.

The Agency received approximately 140 comments in response to the proposed tolerance rule. These comments fell into the following four general categories:

(1) Comments from foreign mango growers (primarily Mexican), foreign governments, and U.S. importers of mangoes supporting reestablishment of a tolerance for residues of EDB on mangoes.

(2) Comments submitted by or on behalf of Florida mango growers protesting reestablishment of a tolerance for residues of EDB on mangoes.

(3) Comments submitted by other interested individuals and environmental and other public interest groups opposed to the reestablishment of the proposed tolerance.

(4) Comments submitted by firms involved in the development of food irradiation facilities as an alternative fruit fly control technique.

Numerous comments supporting the reestablishment of the tolerance were submitted to the Agency by foreign governments (i.e. Haiti, Mexico, Brazil, Columbia, San Salvador, and Peru), foreign mango growers and grower organizations, and U.S. importers, distributors and retailers of imported mangoes. The foreign interests argued that severe adverse economic impacts would result to the affected countries if the EDB tolerance on mangoes were not reestablished because there is no alternative fruit fly disinfestation technique currently available to allow entry of Mexican, Caribbean, Latin American, and South American mangoes into the United States. These comments pointed out that, in addition to providing direct revenue to mango producing countries, the sale of mangoes to the U.S. provides additional economic activity in the agrochemical, transportation, packing and shipping container production industries in those countries.

Haiti, for example, in its comments in support of the proposed tolerance, noted that mangoes are its second largest export crop and that 6 percent of the Haitian population is directly affected by the fresh mango export industry. Haitian interests argued that the economic consequences would be devastating on that country if the tolerance rule were not reinstated. Also strongly in favor of the proposed tolerance was Mexico, which argued that 60,000 Mexican workers would suffer adverse economic consequences if the rule were not established. Mexico claimed that in addition to further immigration pressure other possible consequences would include (1) the tripling of mango prices in the United States; (2) a severe impact on the packaging, transporting and fertilizing industries; and (3) a loss of 5-6 million dollars of tax revenues by the U.S. Government. The Mexican state of Sinaloa likewise pointed out that mango production requires a year round labor force providing permanent employment for farm families, who would contribute to the migratory problems of the United States if they were not employed. Further support was provided by the government of Peru, which contended that the exportation of mangoes from Peru to the United States is of vital importance to numerous Peruvian families, and that the export of mangoes by Peru provides much needed sources to cover expenses for economic development in that country as well as continuing payment of the debt. Comments received from Brazil also focused on the significant local economic problems for mango producing areas in Brazil in the absence of the tolerance rule. The government of Columbia pointed out, moreover, that the premature termination of the EDB disinfestation program would adversely affect plans to redress debt imbalances through the generation and diversification of exports.

The North American Plant Protection Organization, representing the plant protection organizations of Canada, Mexico, and the United States, claimed that the adverse economic impacts on mango producing countries would also affect the ability of these countries to deal effectively with other plant health matters, including cooperative programs affecting more than the exporting countries. The organization also argued that the current lack of an effective treatment for mangoes would be likely to result in the increased smuggling of

infested fruit into the United States with the resultant introduction of exotic fruit flies and an increase in pesticide usage in the domestic market.

U.S. mango importers, distributors and trade associations who supported the reestablishment of the tolerance (e.g. Texas Citrus and Vegetable Import Association, United Fresh Fruit and Vegetable Association, Produce Marketing Association, North American Mango Importers Association) commented that the marketing of imported mangoes results in beneficial economic activity to many U.S. businesses. They also pointed out that the consumption of mangoes in the United States has significantly increased in recent years, and that the reestablishment of the tolerance would prevent a marketing interruption for mangoes. One Texas importer argued that the expiration of the tolerance would probably force his company out of business. This commentor also contended that the Florida mango crop is small and only available during the months of June and July. Florida Citrus Mutual, an organization representing 12,982 Florida citrus growers, also supported the mango tolerance proposal.

The grower countries and U.S. trade associations also agreed with the Agency's assessment that the health risks associated with the actual levels of EDB in imported mangoes at the time of consumption are acceptable for the short-term period of the tolerance rule. In fact, M.A. Hanna, a fifty percent owner of a Brazilian fruit exporter, requested that the tolerance rule be established for a full year, arguing that no real risk would be added during this short additional period, but the extra time would be crucial to the financial well-being of its import business.

Many mango growing countries and organizations (primarily Mexican) indicated that they have been performing studies to find alternative methods to the use of EDB in coordination with the U.S. Agricultural Research Service (USDA). Such alternatives include heat treatment, treating the fruit with non-toxic hormones, and irradiation. In addition, many mango growing areas have implemented costly phytosanitary campaigns which have made progress in minimizing and controlling the fruit fly populations. Many commenters claimed that they expected alternatives to be available by the end of the extension period (e.g., irradiation facilities in Columbia).

The Agricultural Research Service (ARS), U.S. Department of Agriculture, provided the Agency with detailed information on the potential alternatives to EDB treatment, and research progress to date. Preliminary radiation studies were conducted in 1985 and research in this area is continuing in order to determine the radiation dose necessary to achieve quarantine security. ARS is also actively working on the hot water treatment method; studies to date show promise that quarantine security can be achieved under submersion conditions that will not lead to phytotoxicity (fruit damage). The North American Plant Protection Organization also provided detailed information on the development status of alternatives to EDB.

Additional comments on the development of alternatives were received from the North American Mango Importers Association (NAMIA), which contended that significant progress had been made in developing a replacement quarantine treatment for EDB in mangoes, but that as much as two years of work were required for the success of these efforts. NAMIA argued that without the reestablishment of the tolerance rule, the funding for this research, which comes largely from the mango industry itself, would not be available and the future of the mango industry would be quite hopeless. In its view, the establishment of the proposed rule would result in the long-term viability of the mango import trade, and would provide benefits to the domestic mango producers as well as the foreign producers by allowing the development of a new quarantine treatment.

Comments submitted to the Agency by or on behalf of Florida mango growers generally opposed reestablishment of the tolerance based on three concerns, namely that (1) the use of EDB by foreign producers gives such foreign interests an unfair advantage over Florida growers who cannot use EDB; (2) EDB poses a public health risk; and (3) other quarantine treatments are available. Requests were also made that a hearing be held before a final rule was issued. Additional arguments presented by representatives of a number of Florida mango growers were that (1) harm to foreign countries is not a valid reason for EPA's failure to protect the public from dangerous pesticides; (2) little if any information is in the record about the efforts being made to develop alternatives to EDB for mangoes; (3) the adoption of the proposal would be a disincentive to the development of alternatives; (4) the comment period should not have been expedited based on Article 2.6.1 of the Standards Code under theAgreement on Technical Barriers to Trade; (5) the Agency has not provided any new risk/benefit data or scientific information to justify the reestablishment of the tolerance; and (6) the residues on imparted mangoes are likely to be higher than the 30 ppb tolerance limit. These commenters contended that to allow for equal treatment for U.S. growers the proposal must either be withdrawn or that EPA should allow the domestic producers to fumigate their mangoes with EDB as long as they meet the 30 ppb tolerance.

Comments received from certain interested individuals and environmental and other public interest organizations were also opposed to the reestablishment of the tolerance. Specifically, the Public Voice for Food and Health Policy argued that the proposed rule would present an unreasonable delay in the elimination of EDB's use as a fumigant and would only prolong consumer exposure to the pesticide. The National Coalition Against the Misuse of Pesticides likewise expressed concern over the potential health risks associated with exposure to EDB from mango consumption, and argued that the establishment of this interim tolerance would be a disincentive to the development of alternative treatment methods by mango producing countries. Congressman Dante Fascell also submitted a comment in opposition to the proposal based on his concern over the public health hazard posed by the tolerance. The Massachusetts Department of Public Health expressed its view that reinstituting the tolerance would not be in the best interest of the consumer and would pose a needless health risk.

Finally, comments submitted by three U.S. firms engaged in the business of developing and/or operating commercial irradiation facilities were divided in their views about the appropriateness of establishing the tolerance. Radiation Technology, Inc. expressed a concern that the reintroduction of an EDB tolerance for mangoes would inhibit the development and use of irradiation facilities for fruit fly disinfestation, and therefore urged that the Agency not establish the 1-year tolerance. Emergent Technologies, Inc. also urged that there be no relaxation of the pressures for growers, importers, etc. to contract for the use of alternatives as quickly as possible, but recognized the appropriateness and economic importance of maintaining the use of EDB for the 6-to-12 months required until the alternatives are in place and operational. The third firm, Isomedix, supported the proposed tolerance for EDB in mangoes. Isomedix pointed out that the irradiation facilities for mango treatment would not be operative until

well into 1987, and that therefore the reestablishment of the EDB tolerance was necessary to assure the uninterrupted importation of the increasingly popular fruit and ensure the survival and viability of mango industries of friendly foreign exporter countries and their U.S. distributors.

The Agency has carefully considered the large number of comments submitted in response to the proposed tolerance. These comments, and information received from the U.S. Department of Agriculture have persuaded the Agency that the adverse economic impacts associated with the expiration of the EDB tolerance on mangoes are more severe than originally anticipated by the Agency.

Contrary to the assertions of some commenters, the Agency does not believe that a viable alternative to EDB is available at the current time. For example, vapor heat treatments may be efficacious in disinfecting the mangoes, but have unacceptably high phytotoxic effects to the fruit. Without the establishment of the interim tolerance, economic impacts will result at many levels of the economy, both in the United States and abroad. There is ample evidence that foreign producers and the United States Department of Agriculture are working diligently and rapidly toward the development of alternative treatment methodologies and that the establishment of this short-term tolerance will not be a disincentive towards that effort.

Although the Agency appreciates the concerns expressed by American mango growers, the fact Florida mangoes can be shipped throughout the United States without fruit fly disinfestation treatment, with the exception of California and Texas. While these two states represent an estimated 10 to 15 percent of the national market for mangoes, these states have not been traditional markets for Florida produced mangoes. During the time that EDB was a registered fumigant for use on mangoes, mangoes were not typically fumigated in the Florida EDB fumigation facilities, except for small quantities of mangoes shipped from Florida to California for processing.

The Agency has not received any risk information which changes its assessment that the public health risks are very low (in the 10^{-6} to 10^{-7} range) for the 1-year time period covered by this tolerance rule. To the extent that there is any potential concern that mangoes with residues over the 30 ppb limit could be shipped to the United States, the Agency notes that the Food and Drug Administration carries out its enforcement activities at the time of entry of the fruit into the country. Thus, any violative fruit will not be accepted into the United States and will not reach the American consumer.

In conclusion, the Agency believes that it has properly assessed all relevant factors, pursuant to the requirements of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), in reaching its conclusion that the establishment of this interim tolerance will protect the public health. Taking all relevant information into account, the Agency has concluded that the adverse economic consequences are greater than previously anticipated and that the risk to the public health is very low for the short time this tolerance rule will be in effect. Moreover, in the Agency's view, the establishment of this tolerance rule has met all the procedural requirements of the FFDCA, the Administrative Procedure Act, and the GATT Convention. The Agency has, in fact, allowed more time to comment than required in this action by § 408(e) of the FFDCA. Judging from the numerous comments, diverse views and wide ranging arguments presented to the Ageny, it is clear that a meaningful comment period has been afforded.

With regard to the contention that there is no basis for expediting the comment period based on Article 2.6.1 of the Standards Code under the Agreement on Technical Barriers to Trade, the Agency notes that the GATT provisions at issue address notice to the international community, not to domestic interests. The importance of the timeliness of this tolerance rule is amply clear, given the expiration of the previous tolerance rule for EDB on mangoes and the lack of current alternatives for fruit fly disinfestation on that perishable commodity.

Based on the information considered by the Agency, and discussed in detail in the November 27, 1985 **Federal Register** notice and support documents available from the Agency at the address given above, and after consideration of the comments submitted to the docket, the Agency has concluded that the tolerance established by amending 40 CFR 180.397 will protect the public health. Therefore, the regulation is established as set forth below. This regulation is effective immediately, and will expire on September 30, 1986. A one-year renewal will be considered if by September, 1986 USDA and the exporting countries have substantially moved toward completion of the basic research required to establish alternative fruit fly disinfestation protocols, and data indicate that implementation of non-EDB fruit fly disinfestation techniques by the 1987/1988 harvest season is probable.

Any person adversely affected by this regulation establishing a tolerance of 30 ppb for residues of EDB per se in the edible pulp of mangoes may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

In the event that a hearing is requested, this tolerance rule remains effective during the pendency of the hearing. Section 408(d)(4), FFDCA.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: February 11, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR 180.397 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346(a).

2. By amending § 180.397 by revising paragraph (c) to read as follows:

§ 180.397 Ethylene dibromide; tolerances for residues

* * * * *

(c) Tolerances are established for residues of ethylene dibromide *per se* in or on the following raw agricultural commodities resulting from use of ethylene dibromide as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture.

Commodities	Parts per million	Expiration date
Mangoes	.03 ppm in edible pulp.	Sept. 30, 1986.

[FR Doc. 86–3491 Filed 2–13–86; 8:45 am]

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federal register

Friday
February 14, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127 and 135
Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Reopening of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Notice No. 85-16]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period on notice of proposed rulemaking (NPRM).

SUMMARY: This action reopens the comment period on the notice proposing future requirements pertaining to the use, installation, inspection and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S Transponders in U.S.-registered civil aircraft. The reopening of the comment period was requested by the Air Transport Association and the Air Line Pilots Association. The requests were made on the following bases: more time would be needed to more fully evaluate effects of the upcoming issuance of the Technical Standard Order (TSO) on Mode S Transponders as they might affect Mode S Transponder requirements in the National Airspace System (NAS); and more time is needed by a widely dispersed membership to review additional material just made available to the petitioners on the proposed Mode S System. Upon examination of the petitioners' requests, the FAA has determined it appropriate to reopen the comment period.

DATE: Comments must be received on or before March 3, 1986.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 23799, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, environmental, and energy aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23799." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking any future action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of the NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

On September 17, 1985, the FAA published a Notice of Proposed Rulemaking announcing the proposed use of Mode S Transponders in the NAS (50 FR 37674, Notice No. 85-16). This notice, the comment period for which closed on Dec. 16, 1985, proposed mandatory use of either the ATCRBS or Mode S Transponder as well as automatic pressure altitude reporting equipment within all terminal control areas (TCA) (specifically to include Group II TCA's), and above 12,500 feet mean sea level (MSL) within the contiguous U.S. and the District of Columbia excluding airspace at and below 2,500 feet above ground level (AGL). Also, transponder installation requirements were proposed which would result in a gradual phase-in of Mode S in the National Airspace System (NAS). After January 1, 1992, all newly installed transponders in U.S.-registered civil aircraft would be required to meet requirements of the technical standard order (TSO) for airborne Mode S Transponder equipment. Projected increases in air traffic will require improved aircraft location and identification information, which will be provided by the proposed Mode S and automatic pressure altitude reporting equipment requirements. Those requirements are an essential component of the NAS Plan. The notice also proposed test and inspection requirements for the Mode S Transponder and a new output power test requirement for the ATCRBS transponder.

By letter dated December 10, 1985, the ATA, on behalf of its member airlines requested an extension of the comment date. To support its request, ATA submitted that the proposed new equipment requirements contained in Notice No. 85-16 are based on a FAA Technical Standard Order C112. Since the TSO has as yet not been issued, and considering the potential impact of the proposed rulemaking, it would be reasonable for FAA to extend the date for comments until 30 days after public availability of the adopted TSO C112. From information available, ATA believed that the final TSO would likely be issued by the FAA sometime in mid January 1986. ATA maintained that an extension of 30 days would permit the aviation community and the public to comment on Notice 85-16 with full knowledge of the impact of all its provisions, consistent with the intent of the Administrative Procedures Act. In summary, ATA said it believed Notice 85-16 proposed important changes to the regulations which cannot be completely evaluated without knowledge of the final form of TSO C112 and that in light of the extended time schedule proposed in the rule, it appears prudent to fully consider the anticipated effects prior to adoption.

In addition to ATA's request, the Air Line Pilots Association requested an extension of the comment period until

January 15, 1986. ALPA said that an extension is necessary in order to review additional material that has just been made available to them relating to the proposed Mode S System. In addition, ALPA's request was made in consideration of their widely dispersed membership structure, the attendant coordination problems, the forthcoming holiday season, and the fact that this is not an immediate safety-related issue.

Upon examination of petitioners' reasons for extension, the FAA has determined that good cause exists to reopen the comment period on Notice No. 85–16. In consideration of the forthcoming issuance of the TSO for the Mode S Transponder, a reopening of the comment period would provide the aviation community and the public adequate time to review and comment on Notice 85–16 with a more complete knowledge of the impact of its provisions.

For the reasons set forth in the preamble: (1) The FAA has determined that the proposal does not involve a major proposal under Executive Order 12991; (2) is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the draft Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption, "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 43

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, Airports.

14 CFR Part 121

Aviation safety, Safety, Air traffic control, Air transportation, Aircraft, Airplanes, Airports, Airspace, Transportation.

14 CFR Part 127

Aircraft, Airworthiness, Air traffic control, Helicopters, Airspace.

14 CFR Part 135

Aviation safety, Safety, Air transportation, Airworthiness, Aircraft, Transportation, Helicopters, Air traffic control, Airspace, Airplanes.

Proposed Rule; Reopening of Comment Period

PART 43—[AMENDED]

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

PART 91—[AMENDED]

2. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

PART 121—[AMENDED]

3. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 127—[AMENDED]

4. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

PART 135—[AMENDED]

5. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

6. For the above reasons, the comment period on Notice No. 85–16 is reopened. Comments must be received on or before March 3, 1986.

Issued in Washington, DC, on February 12, 1986.

Walter S. Luffsey,

Associate Administration for Air Traffic.

[FR Doc. 86–3495 Filed 2–13–86; 10:24 am]

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S.J. Res. 74/Pub. L. 99–244

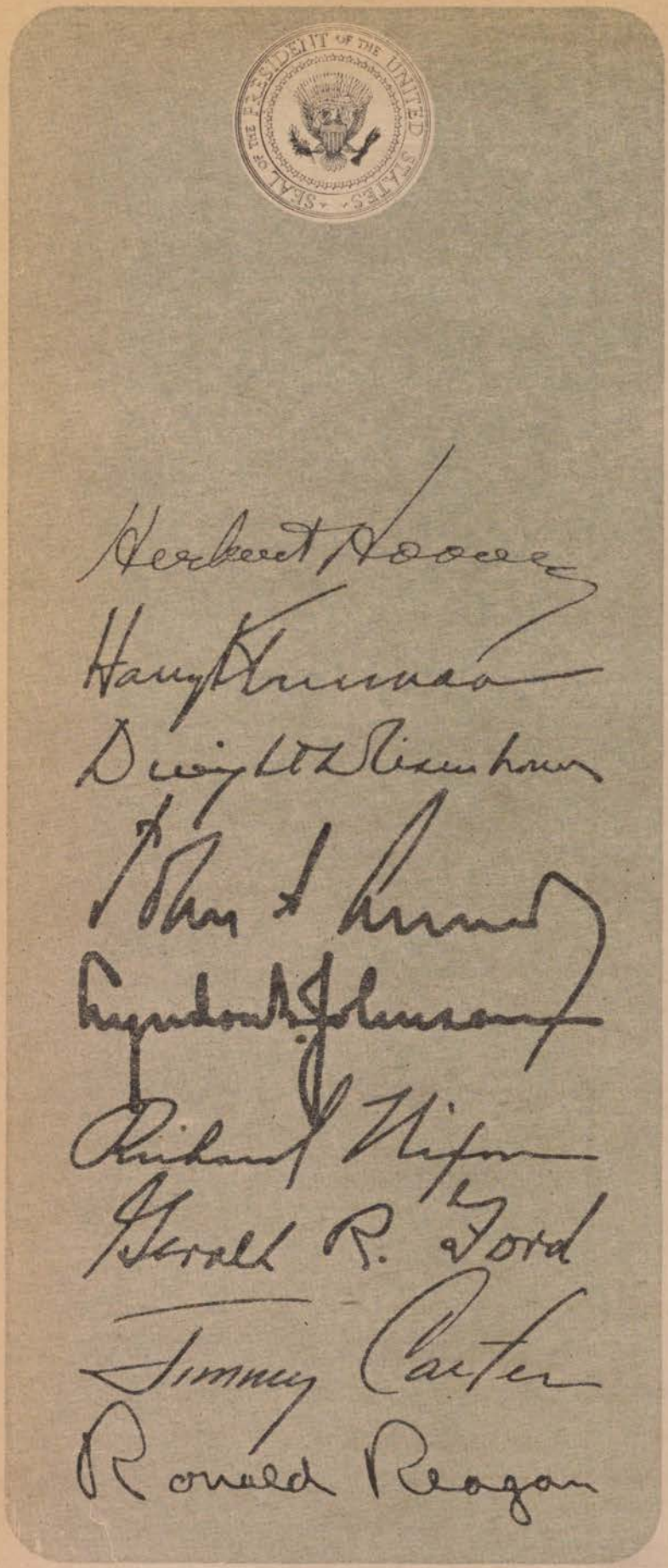
To provide for the designation of the month of February, 1986, as "National Black (Afro-American) History Month." (Feb. 11, 1986; 100 Stat. 6; 1 page) Price: $1.00

S.J. Res. 219/Pub. L. 99–245

To designate the week of February 9, 1986, through February 15, 1986, as "National Humanities Week, 1986." (Feb. 11, 1986; 100 Stat. 7; 1 page) Price: $1.00

S.J. Res. 234/Pub. L. 99–246

To designate the week of February 9, 1986 through February 15, 1986 as "National Burn Awareness Week." (Feb. 11, 1986; 100 Stat. 8; 1 page) Price: $1.00



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